

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

LTL MANAGEMENT LLC,¹

Debtor.

Chapter 11

Case No.: 23-12825 (MBK)

Judge: Michael B. Kaplan

¹ The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

**DECLARATION OF SETH VAN AALTEN IN SUPPORT OF
OMNIBUS OBJECTION OF THE AD HOC COMMITTEE OF
SUPPORTING COUNSEL TO MOTIONS TO DISMISS**

I, Seth Van Aalten, pursuant to 28 U.S.C. § 1746, declare, under penalty of perjury, that the following is true and correct:

1. I am a member of the law firm of Cole Schotz P.C., counsel to the Ad Hoc Committee of Supporting Counsel.

2. I submit this declaration to place in the record on the *Omnibus Objection of the Ad Hoc Committee of Supporting Counsel to Motions to Dismiss* (the “Omnibus Objection”) certain documents submitted in connection with the Omnibus Objection.

3. Attached hereto as Exhibit 1, is a true and correct copy of the transcript of proceedings held on May 9, 2023, in the bankruptcy case *In re LTL Management LLC*, Case No. 23-12825 (MBK) (Bankr. D.N.J.).

4. Attached hereto as Exhibit 2, is a true and correct copy of excerpts of the transcript of the deposition of Mikal Watts taken on April 17, 2023, in connection with this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 26, 2023

/s/ Seth Van Aalten
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Exhibit 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 23-12825 (MBK)
LTL MANAGEMENT LLC, . Clarkson S. Fisher U.S.
Debtor. . Courthouse
LTL MANAGEMENT LLC, . 402 East State Street
Plaintiff, . Trenton, NJ 08608
v. .
THOSE PARTIES LISTED ON .
APPENDIX A TO COMPLAINT and .
JOHN AND JANE DOES 1-1000, .
Defendants. . Tuesday, May 9, 2023
1:00 p.m.
.

TRANSCRIPT OF HEARING ON STATUS CONFERENCE REGARDING
MOTIONS TO DISMISS THE CHAPTER 11 CASE [DKTS. 286, 335, 346,
350, 352, 358, 379, 384] AND OBJECTIONS THERETO; AND
REQUEST OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS FOR ORDER
CERTIFYING DIRECT APPEAL OF PRELIMINARY INJUNCTION ORDER OF
APRIL 20, 2023 TO THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT [ADV. DKT. 84] AND OBJECTIONS THERETO; AND
PAUL CROUCH MOTION AND JOINDER FOR AN ORDER CERTIFYING DIRECT
APPEAL OF PRELIMINARY INJUNCTION ORDER OF APRIL 20, 2023 TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT [ADV.
DKT. 89] AND OBJECTIONS THERETO; AND
MOTION OF AD HOC COMMITTEE OF SUPPORTING COUNSEL TO INTERVENE
[ADV. DKT. 104] AND OBJECTIONS THERETO

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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1 (Proceedings commenced at 1:00 p.m.)

2 THE COURT: Okay. We are up and running.

3 Good afternoon, everyone. This is Judge Kaplan, and
4 we are here in the LTL Management, LLC matters on for today.

5 All right. Let me turn to debtor's counsel. Do you
6 have a preference on what matters we begin with?

7 MR. GORDON: Greg Gordon, Your Honor, Jones Day on
8 behalf of the debtor. I don't think so. I think we've got the
9 issues related to the motions to dismiss --

10 THE COURT: We have --

11 MR. GORDON: -- and then the certification question,
12 as well.

13 THE COURT: Well, we have the intervention motion,
14 correct?

15 MR. GORDON: Correct.

16 THE COURT: We'll talk about scheduling on the motion
17 to dismiss.

18 MR. GORDON: Right.

19 THE COURT: The motions for certification.

20 MR. GORDON: Correct.

21 THE COURT: And the Court has also has a ruling on
22 the FCR.

23 MR. GORDON: Correct.

24 THE COURT: So I'll do the ruling at the end.

25 MR. GORDON: Okay.

1 THE COURT: Keep you all in suspense. And then let's
2 get to the heart of it. Let's get to the certifications.

3 Good morning.

4 MR. MASSEY: afternoon, Your Honor. Jonathan Massey,
5 the proposed counsel to the TCC. I have a PowerPoint. If I
6 may approach, I'll --

7 THE COURT: Sure.

8 MR. MASSEY: And I also tried to do it on the

9 THE COURT: The Federal Circuit has page limits. I'm
10 thinking about having PowerPoint slide limits.

11 MR. MASSEY: Well --

12 THE COURT: But this is only 12.

13 MR. MASSEY: Yeah, this is a -- this will hopefully
14 meet with your approval at least on that. And I will try to
15 share my screen so that I can do the -- apologies.

16 (Pause)

17 MR. GORDON: Your Honor, I would note for the record
18 that the intervention motion relates to --

19 THE COURT: Yeah. I was just actually thinking about
20 that and I guess it would make the most sense to decide who's
21 going to argue or be permitted to argue. So with apologies,
22 Mr. Massey, let me hear the intervention motion.

23 MR. MOLTON: Judge, can I intervene --

24 THE COURT: Yeah.

25 MR. MOLTON: -- and interject for a moment of --

1 THE COURT: Sure.

2 MR. MOLTON: -- breaking news?

3 THE COURT: Breaking news, okay.

4 MR. MOLTON: Breaking news.

5 I just got on my cell phone a docket entry from the
6 Third Circuit. Can I read it into the record?

7 THE COURT: Absolutely.

8 MR. MOLTON: Docket order from Judge Schwartz,
9 Restrepo, and Ambro, "In order to allow the Chapter 11
10 proceedings of LTL Management, Inc." -- and I'm going to cut
11 out some of the docket entry numbers -- "to continue on an
12 expedited basis set by the district court, the Bankruptcy Court
13 for the District of New Jersey, in recognizing that the writ of
14 mandamus is a drastic and extraordinary remedy and there are
15 other adequate means for the petitioner to obtain the relief it
16 seeks, the public petition for writ of mandamus of the Talc
17 Claimants is hereby denied."

18 So I just wanted to let everybody know that
19 especially before we begin this argument, which possibly
20 informs this argument. And it was important for me to get up.

21 THE COURT: So I'm not off the hook.

22 (Laughter)

23 MR. MOLTON: Very good, Judge. And this was David
24 Molton of Brown Rudnick for the proposed counsel for the TCC.
25 So I just wanted to let everybody know.

1 THE COURT: No. Real breaking news.

2 MR. MOLTON: Real breaking.

3 THE COURT: All right. Well, thank you, Mr. Molton.

4 Let me then -- let's move to the motion to intervene.

5 It does make the most sense.

6 Counsel, good afternoon.

7 MR. HANSEN: Good afternoon, Your Honor.

8 Kris Hansen with Paul Hastings on behalf of the Ad
9 Hoc Committee of Supporting Counsel, otherwise known as the
10 interveners in connection with this motion, Your Honor.

11 Your Honor, you have the papers. I don't want to
12 necessarily go back over. We have a long day today. I don't
13 want to go back over everything we said in there. But I just
14 want to point out I just basically what I want to do is address
15 some of the objections --

16 THE COURT: Yes, please.

17 MR. HANSEN: -- that were raised with respect to the
18 motion. I think it's the easiest way to proceed.

19 So just so we're all clear, one of the big objections
20 was that the Ad Hoc Committee of Supporting Counsel does not
21 have a 2019 on file. We filed a 2019 last night, Your Honor.
22 It's obviously redacted. We have also filed a motion to submit
23 that under seal --

24 THE COURT: Right.

25 MR. HANSEN: -- and to keep the unredacted copy with

1 the Court. We'll work out with other parties if they want to
2 see it on an unredacted basis some type of appropriate
3 protective order or other type of mechanism in the order with
4 respect to sealing to the extent Your Honor is amenable to
5 doing that, which we hope you are.

6 That's a living document. It will continue, we
7 believe, to expand as we obtain more information in terms of
8 newer claimants with respect to lawyers that we represent in
9 addition to other lawyers that are signing plan support
10 agreements and coming on as well. The 2019 that we filed is
11 approximately on behalf of 56,000 claimants represented by the
12 law firms that we list in the 2019. It's approximately 15
13 firms.

14 THE COURT: I saw that I think it was 1,300 odd
15 pages. I obviously didn't print it or go through it. So I
16 assume, though, it includes some identity of the actual
17 underlying clients, not just the law firms.

18 MR. HANSEN: Correct.

19 THE COURT: All right.

20 MR. HANSEN: So what you have, Your Honor, is, again,
21 we're -- and to be clear because this is a point that the TCC
22 has raised with us repeatedly and it was also put in their
23 objection, right now we are an Ad Hoc Committee of Supporting
24 Counsel. So those are the law firms that represent those
25 claimants who have signed the plan support agreement.

1 The claimants that they represent under their various
2 retainer letters, as Your Honor can see in connection with the
3 2019, give them broad authority to act on behalf of their
4 clients, which is pretty standard with respect to these -- not
5 that much different from many of the law firms that serve on
6 the other side of the aisle here. And so for now, we represent
7 the Ad Hoc Committee of Supporting Counsel.

8 We have Paul Hastings level representing them, all
9 right. We have not yet had an individual meeting with 56,000
10 claimants that they represent and more that are coming on
11 board. And, again, we'll continue to update that, Your Honor.
12 But we wanted to live up to the promise that we made last week
13 that we would be filing that in, quote, the coming days. So we
14 did.

15 I don't know that there are many other 2019s on file
16 in the case, but we hope that that's helpful to the Court. We
17 realize that Paul Hastings is a newcomer to the situation. We
18 wanted to make sure that that information was out.

19 So, yes, the identifying information that's in the
20 voluminous 2019 that was filed which took an awfully long time
21 to get filed and to get prepared includes first name, last
22 initial, blanks out the address, et cetera. It's very similar
23 to the schedules that Your Honor will have seen in connection
24 with the other 2019s that were filed in the last case. We
25 candidly looked at those in order to obtain some guidance on

1 that.

2 So we believe that at least on the complaint that we
3 don't have a 2019 on file and on the anticipated complaint that
4 if we do file a 2019, it will be non-compliant, that we have
5 done our best to comply with the rule and that it's a living
6 document. It will continue to be updated.

7 THE COURT: Thank you.

8 MR. HANSEN: With respect to the other objections
9 which really return to this question of is a committee of
10 lawyers representing claimants a cognizable party in interest
11 in the case under 1109 or Rule 24(a) or (b). We submit, Your
12 Honor, the answer is unequivocally yes. These are the law
13 firms that signed the plan support agreements that are at the
14 core of this case. They are -- those plan support agreements
15 really drive the plan process that is at the core of this case.

16 And as we said last week, Your Honor, and Mr. Molton
17 said it too and I'm glad the the Third Circuit recognized it,
18 this is the courtroom in which the plan process should play out
19 and in which the motion to dismiss should play out, not some
20 other courtroom.

21 (Sneeze)

22 THE COURT: Bless you.

23 MR. HANSEN: You're the trier of fact in the first
24 instance, so to speak, with all of those issues, Judge. And
25 the lawyers who signed the PSAs on behalf of themselves and now

1 they're working out with respect to all their claimants and the
2 broad authority that exists under their letters, and we do
3 expect each of those claimants to vote with respect to the plan
4 when it's solicited. This is not -- we don't believe this
5 should be a lawyers' vote. We should leave this as a claimant
6 vote.

7 So from our perspective, they're unquestionably a
8 party in interest. They absolutely are. They're driving this
9 case from behind the scenes from a negotiating standpoint with
10 the debtors and they've brought it here before Your Honor. So
11 1109 is meant to be flexible. It's meant to recognize the
12 rights of multiple parties. We appreciate that Your Honor
13 recognized our rights in the context of mediation, as well.

14 And when you look at the rules of either -- from an
15 mandatory perspective or a permissive perspective that sit
16 behind 1109, our view is we satisfy those, as well. One of the
17 big objections that's been raised is that we are superfluous.
18 We signed a PSA, so we should go sit in the corner and since
19 the debtor's carrying the ball, we have no further interest in
20 this case. And we can't even negotiation on supplemental plans
21 or changes, whatever it might be.

22 Nothing's further from the truth, Your Honor. The
23 law firms that are a part of the Ad Hoc Committee continue to
24 work in this case. There's a lot to work out in terms of the
25 plan, the disclosure statement, the solicitation materials

1 going effective, what the trust distribution procedures look
2 like, et cetera. There's an awful lot to do here. And in
3 connection with all of the issues that are going to come before
4 the Court, our Committee is really important. And we believe
5 has the ability to bring a central voice.

6 We've said it's a majority of the claimants
7 repeatedly. It's a little bit of I think we should all --
8 there's bickering back and forth on that. We'll let the facts
9 bear that out as we move through solicitation with respect to
10 the plan. But unquestionably, we believe that they are a party
11 in interest.

12 And so we think we satisfy 1109, and we think we
13 satisfy 24(a) and (b). So those are really the main objections
14 which were can you recognize lawyers as a party in interest
15 and, if you do, are we duplicative of everybody else's efforts.
16 And I think the answers are yes and no unequivocally.

17 And then I also would just raise the point that I
18 think that's prejudicial to the extent that if the Court were
19 to exclude the Ad Hoc Committee of Supporting Counsel from
20 participating in this process. We from an organizational
21 perspective, we're not in existence when the injunctive hearing
22 was held and when Your Honor's narrow ruling was granted.

23 Obviously, there was an objection to that, and now
24 there's an effort to seek to have that ruling brought up to the
25 Third Circuit. The TCC seems desperate to just put anything

1 they can in front of the Third Circuit in the hope that this
2 case gets thrown out before due process can take its course
3 regarding the plan and their motion to dismiss here.

4 Hopefully, the Third Circuit's message today is heard
5 by everybody in the room, and we can proceed in front of Your
6 Honor and stop trying to get out of this courtroom and get
7 higher up. But when you come back to it from a prejudice
8 perspective, if the Ad Hoc Committee of Supporting Counsel is
9 excluded from participating in this process, we believe that's
10 prejudicial to them and the 56,000 parties that they represent
11 and more who are about to sign up.

12 We also don't see any prejudice whatsoever to any
13 other party in this courtroom from allowing the Ad Hoc
14 Committee of Supporting Counsel to participate in the process.
15 So no need to go on on argument, Your Honor. You have our
16 perspective. And, obviously, if you have more questions for me
17 after the respondents come up, I'd be happy to answer them.

18 THE COURT: Thank you, Counsel.

19 Ms. Richenderfer?

20 MS. RICHENDERFER: Thank you, Your Honor.

21 Linda Richenderfer on behalf of the United States
22 Trustee.

23 Your Honor, we have not filed any documents with
24 respect to the request for intervention. I did though want to
25 briefly address the 2019 issue. Counsel is correct, they did

1 file a 2019. And upon our request I believe right before we
2 were walking up the steps, we did receive an unredacted copy of
3 that.

4 But, Your Honor, I just wanted to point out a few
5 things. One is that the United States Trustee appoints
6 claimants to the TCC. We don't appoint law firms. And so it's
7 striking to me that this group consistently calls itself the
8 group of -- I'm not going to get the correct -- supporting
9 counsel. And I just think that that's just something that we
10 all need to bear in mind. We will be reviewing what they filed
11 as part of their 2019.

12 I don't want our silence in this courtroom to be an
13 indication that we think that they have met all the
14 requirements of 2019 and that they have given us the same
15 information as was given in LTL1. Counsel for the supporting
16 group of -- Ad Hoc Committee of Supporting Counsel did not live
17 through the first case as we did when he talks about due
18 process, and we all know. We've spent a lot of time in front
19 of Your Honor going through what we all believe was due process
20 and that's why we got in front of the Third Circuit. That's
21 part of the due process that we're all afforded.

22 So, Your Honor, I don't -- we have to look at the
23 2019. I don't know if -- I don't think I've ever heard of a
24 supporting counsel forming an ad hoc committee. An d hoc
25 committees usually come knocking at the door later on in the

1 case for a substantial contribution claim, which is another
2 reason why 2019 filings and status as an ad hoc committee is of
3 some great importance.

4 THE COURT: Well, let me ask you a question and it's
5 more of in the nature of picking your brain.

6 MS. RICHENDERFER: Okay.

7 THE COURT: And I know you filed -- I do want to note
8 I saw that you filed a motion directed at all committees --

9 MS. RICHENDERFER: Yes, Your Honor. Yes.

10 THE COURT: -- all potential groups --

11 MS. RICHENDERFER: Yes.

12 THE COURT: -- to satisfy 2019 -- to meet the 2019
13 requirements.

14 MS. RICHENDERFER: Yes, Your Honor.

15 THE COURT: We see in all of the various mass-tort
16 cases, whether it be the Diocese case down in Camden or
17 pharmaceutical cases, it becomes standard that the committees
18 work through the attorneys, the tort claimants committees
19 specifically.

20 In fact, I think when there was litigation or
21 pleadings regarding compensation for committee members, much of
22 the focus was on the fact that the actual claimants were not in
23 a position physically to attend to travel, to participate and,
24 therefore, it was logical to work through counsel.

25 Why doesn't that extent in all scenarios? I know we

1 have an ad hoc committee and mesothelioma claimants but, yet,
2 the activity has been through counsel. It is counsel that
3 retained appellate counsel. So it's a fine line, but I'm
4 wondering if it's a meaningful distinction for representation
5 purposes.

6 MS. RICHENDERFER: Your Honor, it's an extremely
7 important meaningful distinction. When the motion was filed
8 during LTL1, the United States Trustee's Office, we filed an
9 objection, and we objected. And our objection was never
10 withdrawn. It was mooted basically when the case was
11 dismissed. And it was also mooted because there was an
12 agreement that was made that I don't even know if it was
13 debtors or LTL or J&J.

14 I'm not quite sure, Your Honor, but there was some
15 agreement that was reached that certain costs were going to be
16 paid to certain attorneys. And it was sort of all at the end
17 of the case so I apologize, Your Honor. I don't have all the
18 details fresh in my memory as to how that all worked out.

19 But we stood by our objection that those costs should
20 not have been paid. And we also know, Your Honor, that we are
21 talking about committee members who are participating, we have
22 learned, in the process and who are very aware of the process.
23 And by that, I mean the actual claimants themselves.

24 I hesitate because I know that one of these days I'm
25 going to have to be asked, probably something's going to come

1 up about the TCC. But, Your Honor, we interviewed, we did a
2 whole new interview process when the TCC was formed for this
3 case. And I can tell you people that are very involved in the
4 process are on that TCC. And by people, I mean claimants.
5 They are on that Committee, and they are involved and they are
6 participating.

7 And, Your Honor, I don't know if there's a lot of
8 them on today's hearing because, quite frankly, as events go,
9 it's probably all not that interesting to non-lawyers. But I
10 do know that on many of our conferences, we have participation
11 via Zoom from people who are absolutely on the Committee. And
12 it is still the U.S. Trustee's position that the Bankruptcy
13 Code does not permit for the expenses of a lawyer who happens
14 to represent a member of the Committee to be reimbursed. And
15 we stood by that objection.

16 And it's a very important distinction, Your Honor.
17 That's the way that it is. And 2019 talks about ad hoc
18 committees of claimants. I mean it would be -- otherwise, we
19 open the door to all sorts of groups coming in pulling in a
20 couple of parties that they say they represent and, yet, moving
21 forward with the litigation.

22 What troubles me, Your Honor, is I don't understand
23 it's not an ad hoc group of supporting claimants. I don't
24 understand that.

25 THE COURT: So if the --

1 MS. RICHENDERFER: That's my concern.

2 THE COURT: And I'll be asking Mr. Molton or
3 whoever's speaking on behalf of the TCC the same. If with each
4 law firm that's a committee member, and I think there are --
5 with respect to the Ad Hoc --

6 MS. RICHENDERFER: Okay.

7 THE COURT: -- they have a representative client in
8 name, it would be no different than the workings of a TCC
9 because we don't have 55 -- you can't make 55,000 -- form a
10 committee out of 55,000 that's workable whether they're
11 working. And to be representative, they work through counsel.

12 Is that the fundamental difference that they haven't
13 linked with a specific identified claimant?

14 MS. RICHENDERFER: Well, Your Honor, they did file as
15 part of their redacted disclosures to the U.S. Trustee the list
16 of names of people that they represent.

17 But let me use an example for Your Honor. The Arnold
18 & Itkin firm, they have been represented by Ms. Laura Davis
19 Jones in this courthouse. And she filed a 2019 statement. And
20 it was filed on behalf of Arnold & Itkin. And she is
21 representing the claimants represented by Arnold & Itkin. And
22 so it really wasn't an ad hoc committee per se, but it was
23 loosely combined group of people who had similar positions in
24 the case. And she's not representing Arnold & Itkin. She's
25 representing the Arnold & Itkin claimants.

1 The same thing happened with -- I'm going to get
2 confused here now. I know there was another individual who was
3 here often and argued in front of Your Honor. A very tall
4 individual.

5 THE COURT: Oh, from California?

6 MS. RICHENDERFER: Yes, from California.

7 UNIDENTIFIED SPEAKER: Mr. Pfister.

8 UNIDENTIFIED SPEAKER: Rob Pfister.

9 THE COURT: Mr. Pfister.

10 MS. RICHENDERFER: Mr. Pfister.

11 THE COURT: Mr. Pfister.

12 MS. RICHENDERFER: And he was here on behalf of a
13 plaintiffs' law firm. And he always represented that he was
14 representing the so-and-so law firm appearing on behalf of
15 their claimants. And so that's why I can't figure out here,
16 Your Honor, why is it an ad hoc group of counsel, supporting
17 counsel as opposed to an ad hoc group of claimants who are
18 represented by the various participants.

19 So it puzzles us because in Imerys, I got several
20 different groupings like that and, here, in the first case we
21 had groupings like that. We had the Ad Hoc Group of Meso
22 Claimants that are represented.

23 THE COURT: So it could be -- and I'm not trying to
24 solve the problem. I'm just trying to get an understanding of
25 where the distinctions are. So it could be an ad hoc group of

1 claimants appearing through counsel on the committee because
2 now they --

3 MS. RICHENDERFER: It could be. But that's not
4 what's being (indiscernible).

5 THE COURT: No, I understand. I'm just trying to see
6 where the differences lie.

7 MS. RICHENDERFER: Right. Your Honor, we've been
8 very confused they filed a 2019 and they're still calling
9 themselves the Ad Hoc Committee of Supporting Counsel. And so
10 our confusion continues.

11 THE COURT: Fair enough.

12 MS. RICHENDERFER: I don't understand why it's not
13 the claimants, an ad hoc committee of claimants who support the
14 plan because ultimately, it's the claimants who get to make the
15 decision. And no one's saying they got to sign on the dotted
16 line today because one of the things is, oh yeah, it was the
17 term sheet and we don't even know where that is right now let
18 alone a plan, a real fully-baked plan.

19 So I'm not saying that people have to be prepared to
20 sign on the dotted line today. They can't. There's nothing to
21 sign. But this has continued to baffle the office and we will
22 be looking closely at the 2019 that they did file. We felt it
23 necessary to file it because we think that sometimes everyone
24 needs a deadline. And we have been hearing from a lot of
25 different people including this Ad Hoc Group we're going to get

1 to it, we're going to get to it.

2 So we did this in the first case also, Your Honor,
3 you may recall.

4 THE COURT: Yes.

5 MS. RICHENDERFER: Never really had to have a hearing
6 on it because everybody got it done. And that's all we want.
7 We just want it done so that there's a record and we'll proceed
8 from there.

9 THE COURT: Fair enough. Thank you, Counsel.

10 Ms. Cyganowski or --

11 MS. CYGANOWSKI: Yes. Just for a moment, Your Honor.

12 Melanie Cyganowski, proposed counsel to the
13 Committee.

14 For a very limited purpose, I know Ms. Beville is
15 going to address the motion, but so that the record is clear
16 because it's been stated in several times in different ways
17 that our TCC members are not as active as they are. But so
18 that the record is clear, they are on all of our meetings.
19 They receive all of our correspondence. When there are votes
20 taken, they are actively participating.

21 Do they have counsel? Yes. Do they have counsel
22 assist them from time to time? Yes. But the Committee truly
23 functions through our committee members.

24 THE COURT: Thank you. I appreciate that.

25 Counsel?

1 MS. BEVILLE: Good afternoon, Your Honor.

2 Sunni Beville from Brown Rudnick on behalf of the
3 TCC.

4 Your Honor, I'll just cut straight to your question,
5 and the question really is is an ad hoc committee or a
6 committee of creditors, they're acting through their lawyers so
7 what is the distinction between an ad hoc committee of law
8 firms. It is a very meaningful distinction.

9 You'll see that Rule 2019 specifically describes
10 groups of creditors acting in concert, not their law firms.
11 It's creditors that are sharing a same purpose, the same goal.
12 In Boy Scouts, I believe Judge Silverstein called it having the
13 same agenda. There has been no evidence, Your Honor that the
14 clients that the law firms represent share this agenda. There
15 is no evidence that their clients are even aware that their law
16 firms are participating as part of an ad hoc committee.

17 I will just turn Your Honor to the Boy Scouts case
18 before Judge Silverstein. In that case, Your Honor, there was
19 an ad hoc committee participating in the case and seeking the
20 Court's authority to be heard to participate in a plan process
21 to be a mediation party. And there were a number of objections
22 raised on a similar basis that law firms are not the
23 appropriate parties. Law firms don't have claims. Law firms
24 don't have a stake in the outcome of litigation.

25 And Judge Silverstein agreed. And so it was

1 important and there was extensive hearings and a bench ruling
2 and an opinion that law firms are not the appropriate party in
3 interest. Law firms don't have standing. For an ad hoc
4 committee to exist, it has to exist through its clients,
5 through members.

6 And in that case, Your Honor, in Boy Scouts, what
7 Judge Silverstein required was for this ad hoc committee to
8 reach out to the various claimants of the law firms and get
9 their consent to act as a committee on their behalf.

10 THE COURT: To reach out to the underlying claimants.

11 MS. BEVILLE: Yes. So in that case, Your Honor, yes,
12 letters were sent out to tens of thousands of sexual abuse
13 victims. And, yes, Your Honor, they asked those sexual abuse
14 victims to consent to being represented as an ad hoc committee
15 to have their collective interests represented by the group,
16 not their individual interest, their collective interest.

17 And they had to acknowledge, A, that they gave
18 authority to their law firm to represent them in participating
19 in the ad hoc committee, they had to acknowledge how the fees
20 and costs of the ad hoc committee were being born; were those
21 fees being passed on to the claims and, if not, they needed to
22 understand what that fee arrangement was. That was part of the
23 affirmative consent required.

24 And, Your Honor, Judge Silverstein did not permit
25 that group to espouse that they represented tens of thousands

1 of claimants. They were only allowed to espouse that they were
2 representative of the number of claimants who responded with
3 affirmative consents. So while the law firms may have
4 represented tens of thousands of sexual abuse victims, 18,000
5 responded in the affirmative. So it was an ad hoc committee
6 that represented the interest of those 18,000 claimants.

7 Here, Your Honor, it's very important to draw that
8 distinction. There has been a lot said in the various
9 hearings, the various briefing there's support, 60,000
10 claimants support or 75,000 claimants. There's no evidence
11 that those claimants support the plan. There's evidence that
12 the law firms support a plan, but that's not the equivalent to
13 claimant support.

14 And so it's important to recognize that Rule 24 of
15 Civil Procedure requires for intervention, for participation
16 that the party have a legally protected interest in the
17 proceeding. It's not the law firms that have that interest,
18 Your Honor. It's the clients that have that interest. And it
19 is simply enough for this to be an ad hoc committee of
20 supporting claimants, but that is not the path that these law
21 firms chose but it's not a supportable path, Your Honor.

22 It's important that there's other ad hoc committees
23 in Boy Scouts. It was an ad hoc committee of abuse survivors.
24 When they originally participated in the case, Your Honor, they
25 touted themselves as an ad hoc committee of supporting talc

1 claimants. But that changed to ad hoc committee of supporting
2 counsel. Those terms are not interchangeable, Your Honor.
3 Those terms do have a meaningful distinction, and it's
4 important for that to be recognized.

5 THE COURT: Thank you.

6 MS. BEVILLE: One of the points I'd like to just
7 point your Court to is after reviewing the Ad Hoc's motion
8 reviewing the cases that were cited, there are no cases that
9 stand for the proposition that a group of law firms can
10 participate in the case.

11 The cases that were cited point to standing of
12 official committees as that is an express party in interest
13 under Section 1109 of the Bankruptcy Code. It talks about
14 standing of court-appointed legal representatives, for example,
15 the FCR in this case as they are standing for future claimants
16 that don't have a voice absent that representative. But
17 there's no case law, Your Honor, at least that I could find
18 that stands for the proposition that law firms acting on behalf
19 of law firms have standing.

20 When we all come to the podium, Your Honor, we talk
21 about -- we represent we're part of this law firm acting on
22 behalf of and we name a client or a client group. That's not
23 what's being done here with this Ad Hoc Committee of Supporting
24 Counsel. Paul Hastings stands here on behalf of a group of law
25 firms. That's not appropriate.

1 The case law under Rule 24 and Section 1109 talks
2 about a legally protected interest. It's not an interest in
3 the case outcome. That's not sufficient. The interest must be
4 concrete, it must be more than generalized, and it must be more
5 than a general economic interest in the outcome of the case.
6 And, Your Honor, all of those cases that have those standings
7 were adopted in Third Circuit and have even been cited in
8 bankruptcy courts here in New Jersey.

9 Your Honor, I'll note that the Ad Hoc Committee did
10 file a 2019 statement. It did check the boxes as far as the
11 law firms acknowledging that they're acting as part of a group.
12 It did not check the boxes that the creditors have acknowledged
13 they're acting as part of a group. There's no statement, no
14 evidence that any of their clients are aware that they're part
15 of the Ad Hoc, that they're aware of the positions of the Ad
16 Hoc Committee.

17 Are their clients even aware of the terms of the term
18 sheet? And are the clients aware that they are being held out
19 as supporting the terms of the plan term sheet? There is no
20 evidence of that, Your Honor.

21 THE COURT: But I don't need evidence of that at this
22 juncture. I mean that is an important issue down the road.
23 The issue you would agree is whether or not they're aware that
24 they are being represented in this case as a group.

25 MS. BEVILLE: That they're aware they're being

1 represented in the case as a group and that the law firms are
2 acting on their collective interest?

3 THE COURT: Yes.

4 MS. BEVILLE: And the law firms as a group stated
5 collective interest is to support the debtor's plan. That is
6 not a defensible legally protected interest for intervention
7 purposes. And if the clients are not aware that their names
8 are being used to support that collective interest, then I
9 don't think it is proper, Your Honor.

10 So if I am a client in this case, I sign an
11 engagement letter with a firm, I want them to represent me.
12 But if they're now saying that Sunni Beville supports a debtor
13 plan that I've never seen before, I may not consent to that.
14 And as a client, as a claimant, I have a right to consent to my
15 participation in an ad hoc group.

16 And that was the finding by Judge Silverstein in Boy
17 Scouts, Your Honor, was that it had to be an ad hoc committee
18 of creditors and those creditors had to consent to their
19 participation in the group. And we don't have that here, Your
20 Honor.

21 And we were talking about Rule 2019. I would submit,
22 Your Honor, that simply because it was filed doesn't mean that
23 Rule 2109 was complied with. In the Boy Scouts case, Your
24 Honor, they had to include a list of the claimants, the cancer
25 type.

1 In Imerys, that was required. But it was more than
2 that, Your Honor. They required a showing, they required
3 copies of the affirmative consents. And that was not done
4 here, and I will argue that that is actually fatal to the Ad
5 Hoc Committee's participation in the case where they can't show
6 that their individual law firm clients have consented to
7 participation.

8 And I'll note, and I know that the Ad Hoc Committee
9 counsel included in their letter to the Court a brief that was
10 filed in Boy Scouts. But that is not the full story, Your
11 Honor. And the 2019 is not a technical requirement. And as
12 Judge Silverstein stated, the ad hoc committee law firms
13 themselves don't have standing. It's their clients that have
14 standing.

15 And when we start to talk about the clients of these
16 law firms, I'm going to leave to Mr. Birchfield from Beasley
17 Allen to address the claimant interest themselves. But here,
18 Your Honor, the Ad Hoc Committee indicates that its stated
19 interest is to support the debtor. And in the same pleading,
20 Your Honor, it indicates that the debtor's primarily goal in
21 this case is to resolve its talc liability while paying as
22 little as possible.

23 That's the stated purpose of the Ad Hoc Committee is
24 to support the debtor in that endeavor. I'm not sure that any
25 of the claimants have consented to that representation.

1 And, Your Honor, I'll just make a final note. The
2 debtor and the Ad Hoc Committee are conflating representation
3 of the law firms with representation of claimants. We've heard
4 the debtors state time and time again they have the support of
5 a majority of claimants. That hasn't been proven. And we are
6 not even aware if any claimants are aware of the terms of their
7 proposed plan.

8 The Ad Hoc Committee identifies itself first as
9 supporting talc claimants, and then they change that to
10 supporting counsel. Again, Your Honor, they're not
11 interchangeable. Their interests are not synonymous.

12 I know that you'll hear a lot of passion from the
13 parties at the podium, Your Honor. And you'll hear from the
14 law firm members of the Ad Hoc counsel's desire to express
15 support for case outcome. But those desires and passion for
16 this case cannot displace the rules of the Court, the
17 restrictions of the Bankruptcy Code, and the applicability of
18 the bankruptcy rules.

19 The rules matter here, Your Honor. The Ad Hoc
20 Committee submitted a brief to the Third Circuit without leave
21 of the Third Circuit, without leave of this Court to do so.
22 It's important for Your Honor to assess whether or not the Ad
23 Hoc Committee of Law firms has requisite standing. We argue
24 they do not.

25 If you find that they are acting on behalf of their

1 claimants, then before they are permitted to intervene, they
2 have to get consent of their claimants to take the positions
3 that they're taking and have the claimants be a part of the
4 process, be part of the decision making, and sign on to the
5 positions that are being taken.

6 Ms. Cyganowski was absolutely correct. The TCC is
7 often used as an example of a minority of claimants. We are a
8 fiduciary, Your Honor, for all talc claimants. We are a
9 committee comprised of members that participate and input all
10 of the decision-making of the Committee. And the point, Your
11 Honor, here is the other claimants should be afforded the same
12 opportunity. Thank you.

13 THE COURT: Thank you, Counsel.

14 MS. BEVILLE: One other note, Your Honor, just on the
15 Rule 2019, it has been filed but it was filed in redacted
16 process. I know counsel indicated he would work with the
17 parties, but the TCC does request an unredacted copy. Thank
18 you.

19 THE COURT: That's fine. Thank you.

20 Mr. Birchfield, you've been trying. Come on up.

21 MR. BIRCHFIELD: Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 Andy Birchfield, Beasley Allen, on behalf of Alishia
24 Landrum. And my purpose is to address the narrative of the Ad
25 Hoc Committee of Counsel, the narrative that is the foundation

1 of its motion to intervene. That narrative is that the Ad Hoc
2 Committee of Law Firms represent a vast majority of talc
3 claimants, and it seeks to intervene in order to serve as a
4 counterweight to the loud minority of the TCC and to maximize
5 the Ad Hoc Committee's constituents' recovery by supporting the
6 debtor's plan of reorganization.

7 This narrative raises two important and troubling
8 questions. The first question is if this group represents the
9 majority of talc claimants, what is the definition of talc
10 claimants that's being used. And the second question is
11 according to the terms of the agreement that this group
12 contends maximizes recovery, what would the talc claimants
13 receive.

14 So for the first question, what is the definition of
15 talc claimants, one definition, the definition that is used and
16 has been used by the TCC and its members is based on the
17 evidence and the science that has been guided by years of
18 litigation; years of litigation in state courts, litigation in
19 federal court here, the MDL court, that has been guided through
20 an extensive Daubert process hearings, experts, and a Daubert
21 decision by Judge Wolfson.

22 That is the basis of the definition of talc claims
23 that focuses on the types of injuries that are supported both
24 by the evidence and the science. Those injuries are epithelial
25 ovarian cancer with specific subtypes and mesothelioma.

1 This Court in appointing in its order appointing Mr.
2 Ken Feinberg as a Rule 706 expert followed this definition
3 without objection from LTL. The Court ordered Mr. Feinberg to
4 estimate the value and the volume of ovarian cancer claims and
5 mesothelioma claims, not uterine cancer claims or vaginal
6 cancer claims or cervical cancer claims. Not the whole host of
7 additional claims that would be covered under this new
8 definition of gynecological cancers.

9 This new and expensive definition that is outlined in
10 the debtor's plan, the plan support agreement, and that the
11 members of the Ad Hoc Committee are -- they're contractually
12 bound to accept this definition. This would be counter to the
13 definition that was employed in LTL1. It would be counter to
14 what the Court ordered Mr. Feinberg to investigate and to
15 estimate.

16 Your Honor, for years, leadership law firms, law
17 firms that have been litigating in state courts, the MDL
18 leadership that has operated here in this courthouse, they have
19 been guided by what the evidence and the science supports and
20 they have been advising, they have been counseling law firms
21 across the country about what types of claims are supported.
22 And law firms have -- many law firms have followed that
23 guidance.

24 If the debtor and the Ad Hoc Committee of Supporting
25 Counsel, if their agreement were implemented, if their

1 agreement were implemented and this new definition were
2 applied, a definition that is untethered, untethered to support
3 from the evidence and the science, the floodgates would be
4 flung open wide.

5 If the floodgates are opened, then who could say what
6 the denominator would be, who could say what it would require
7 to have a majority, much less a super majority? The overly
8 broad definition is an effort to distort the voting power, the
9 voting power of the real victims here. So the first question,
10 what is the definition that's being used, that's a troubling
11 question.

12 The second question is what has the Ad Hoc Committee
13 law firms agreed to? What are the terms that they have agreed
14 to that purportedly maximizes value for its constituents? Your
15 Honor, if we could take -- I want to take just a quick look for
16 just a moment --

17 THE COURT: Sure.

18 MR. BIRCHFIELD: -- at the plan support agreement.

19 THE COURT: But I have a question for you --

20 MR. BIRCHFIELD: Yes, sir.

21 THE COURT: -- while you pull it up. So what do you
22 -- what role do you see for claimants who are victims of --
23 alleged victims of other types of cancer that they ascribe to
24 talc in this case? Are they claimants?

25 MR. BIRCHFIELD: Your Honor, I would say that they

1 would not be claimants. The tort system, the civil justice
2 system has mechanisms for addressing that. I mean if we --

3 THE COURT: But under the very broadest definition
4 under the Bankruptcy Code, it would be a claim, so -- and I'm
5 asking this because we haven't discussed this --

6 MR. BIRCHFIELD: Right.

7 THE COURT: -- in detail.

8 MR. BIRCHFIELD: And it would be a very difficult
9 question to grapple with if we were dealing with a debtor in
10 financial distress. Here we have a debtor that could choose,
11 and I would urge they do pay. If they want to pay all of the
12 claims that the Ad Hoc Committee represents, J&J can do that.
13 J&J is not a debtor. J&J can agree to enter into settlement
14 agreements with the Ad Hoc Committees on the terms that they
15 have here.

16 But if you were dealing with -- to address your
17 question, if you were dealing with a debtor that was in
18 financial distress, then you would have to weigh, I believe the
19 Court would have to weigh what are the claims that are
20 supported by the evidence and the science and the ones that are
21 not. You would have to vet those.

22 THE COURT: I guess --

23 MR. BIRCHFIELD: And the tort system has done that.

24 THE COURT: One would think that the plan could
25 address that just by ascribing a different value or potential

1 compensation scheme for -- depending upon the injury and the
2 nature of the cancer.

3 MR. BIRCHFIELD: Your Honor, not with what's been
4 proposed here. Not what's been put forward by the Ad Hoc
5 Committee. Then it would come -- it comes back to the
6 foundational question of whether there is jurisdiction here,
7 whether there's financial distress or not.

8 Theoretically, Your Honor, if you were dealing with a
9 company in financial distress, I'm not trying to avoid the
10 issue.

11 THE COURT: No, I understand.

12 MR. BIRCHFIELD: There would be ways that that could
13 be addressed. It would be addressed by following what has been
14 -- what has played out in the tort system over the following
15 years.

16 THE COURT: Just one second. Mr. Gordon?

17 MR. GORDON: I'm sorry to interrupt. I need to
18 interpose an objection. He's about to put up on the screen
19 because we just saw it the exhibit to the term sheet that we
20 maintain is confidential. It's subject to confidentiality.
21 The issue of its confidentiality is set for hearing on May
22 16th, and we object to this being shown publicly.

23 MR. BIRCHFIELD: Your Honor, I did not intend. I did
24 not intend. I had two slides in here. The only slides that I
25 have are from the plan support agreement that are not

1 confidential.

2 I had two slides here that are based on the term
3 sheet that would show what the claimants would receive. It is
4 confidential. I thought that it was going to be addressed
5 here. I hid the slides, as Mr. Gordon can see. Those slides
6 that pertain to the term sheet are hidden. I had no intention
7 of displaying those.

8 I would like to address --

9 MR. GORDON: It did just come up on the screen. It's
10 right there.

11 MR. BIRCHFIELD: That's the plan. The only ones that
12 I have.

13 THE COURT: Nothing's up on the -- at least nothing's
14 up on the screen yet that I haven't seen.

15 MR. GORDON: Well, it was up.

16 THE COURT: Oh, okay.

17 MR. GORDON: Because what's going to happen here,
18 they've already advanced the argument that they're just going
19 to put it in publicly and then contend that we can't argue its
20 confidentiality, and we have a I think a text order from Your
21 Honor setting the hearing on that very issue for the 16th, and
22 I would ask that the confidentiality not be breached today.

23 I would also object on the basis this is far beyond
24 information needed to assess whether or not an ad hoc committee
25 should intervene. This is getting into plan issues and

1 solicitation issues and the like. It's not relevant.

2 MR. BIRCHFIELD: Well, what the plan support
3 agreement shows, it is a contract that binds the ad hoc
4 committees to the terms of the plan support agreement which
5 includes the term sheet, which includes the grid that shows the
6 values that the claimants would receive. That is an important
7 part of the narrative here. And that is an important part of
8 our position that the motion should be denied.

9 THE COURT: Go ahead and argue it. I don't have to
10 read the language. Argue the position.

11 MR. BIRCHFIELD: All right. So, Your Honor, the plan
12 support agreement says --

13 THE COURT: Of course, don't read the slide into the
14 record. Okay?

15 (Laughter)

16 MR. BIRCHFIELD: Okay. All right.

17 The plan support agreement is not contested as being
18 confidential. That's not. The exhibit to the term sheet is
19 what is argued as being confidential. But the plan support
20 agreement says that all present and future talc claims,
21 personal injury, governmental entity claims, all talc claims
22 against all debtor-related parties for a total contribution
23 from the debtor not to exceed the present value of \$8.9
24 billion.

25 According to that plan support agreement, the members

1 of the Ad Hoc Committee, the signators on that agreement, they
2 agree to oppose any objection to the debtor's efforts to
3 confirm the Chapter 11 plan, to oppose any other restructuring
4 proposal or plan of reorganization. So if there were a
5 proposal that evolved through this process or another plan that
6 was put forward that would be better for talc claimants, the Ad
7 Hoc Committee members are contractually bound to oppose that
8 proposal.

9 They're contractually bound to not seek to materially
10 amend the -- or modify the Chapter 11 plan or any related
11 documents. That's the term sheet, not to file any pleading
12 materially inconsistent, not to object or to delay or impede or
13 take any other action to interfere with the confirmation of the
14 Chapter 11 plan.

15 Your Honor, what I think is vitally important here to
16 address, what would the claimants receive. What would the
17 claimants receive under the terms of the agreement? There is a
18 grid, and we argue that it should not be confidential. They've
19 doubled down on their position today that that is the heart of
20 their proposal. That is the heart of this proceeding that
21 these firms are bound to this term sheet and they say that it
22 is, that the support is growing. What would the claimants get?

23 And, Your Honor, I would ask the permission to walk
24 through just a couple of examples of what the claimants would
25 get.

1 THE COURT: No, I'm going to pass on that, because I
2 understand the point you're making.

3 MR. BIRCHFIELD: Your Honor, the lawyers that
4 comprise the Ad Hoc group, they're good lawyers. If they and
5 their clients choose to accept, if they choose to accept such
6 discounted values and they are, I mean I know I can't talk
7 about it, but they're bound. They're in the agreement. They
8 are steeply, steeply discounted values.

9 If they choose to do that in exchange for quickpay, I
10 respect that decision. But they should not be able to foist
11 that position on the majority of claimants, the majority of
12 claimants if the definition is an appropriate definition of
13 talc claims -- epithelial ovarian cancer claims and
14 mesothelioma claims -- then they do not represent the majority
15 of those claims.

16 If J&J wants to settle with them, they can do that.
17 I would urge them to do that today. Based on the terms that
18 they have in the term sheet, they can do that outside of
19 bankruptcy. Just don't attempt, don't attempt to force these
20 values on the majority of talc claims that are supported by the
21 evidence and the science.

22 The TCC urges the Court to -- continue to urge the
23 Court to dismiss this as a bad-faith filing. But for
24 consideration of the motion that all further proceedings, the
25 Ad Hoc Committee by contract is an alter ego of LTL. And

1 allowing them to be a party in these proceedings just gives LTL
2 a second seat at the table, and that's inappropriate and we
3 urge you to deny the motion, Your Honor.

4 THE COURT: Thank you.

5 MR. BIRCHFIELD: Thank you.

6 THE COURT: Ms. Beville?

7 MS. BEVILLE: Your Honor, if I may, I just want to
8 address the question that you asked about whether claimants
9 with different types of cancer that have been litigated
10 already, would they have a claim in the bankruptcy. I think,
11 Your Honor, you're right they would have a right to file a
12 claim. Claims are broadly defined and can include any
13 potential right to payment.

14 But you put your finger on the very issue, Your
15 Honor, is those claims may not be compensable either under the
16 plan or under trust distribution procedures. If we got to a
17 point where we were actually voting on a plan, they may be
18 either separately classified or allowed for zero dollars for
19 voting purposes. There's a lot of ways that those claims could
20 be treated.

21 One of the concerns we have is this conflation of all
22 claims being put in one pot and potentially sharing a pot of
23 money pro rata not depending on the legitimacy of the claims
24 that are being reported. So you may have a claim, but it may
25 not be a compensable claim.

1 THE COURT: All right. Thank you.

2 Mr. Thompson?

3 MR. THOMPSON: Thank you. Your Honor, I'll be
4 brief. I've tried to limit what I was going to say based on
5 what's already been said.

6 In response to your question, who decides what a
7 valid claim is, that's a great question and it's one that
8 respectfully you don't have subject matter jurisdiction to
9 decide because this is a bad-faith bankruptcy. And so what we
10 see here are claims, what LTL has done is they've broadened the
11 creditor class beyond what was being litigated in the tort
12 system. They've broadened it to include claims that are not
13 supported, that did not clear the Daubert challenges just to
14 get the votes.

15 They're doing all this just to get the votes.
16 They're creating creditors that they don't have to pay anything
17 to out of bankruptcy. Tens of thousands of these gynecological
18 cancers that don't have a scientific connection to talc, they
19 are willing to pay those people who are owed -- if they exist,
20 that are owed nothing in the tort system. The gate is the --
21 the challenge is to enter -- who decides what is a good case,
22 well, the tort system does and that limits the types of claims
23 that are filed.

24 I have a large firm. We are retained by about 350
25 mesothelioma victims a year. We only sued J&J probably 35 to

1 40 of those cases. Why? Because most of them weren't very
2 good J&J cases. They had a lot of other exposure to other
3 stuff. The tort system determines what valid claims are. And,
4 obviously, J&J is desperate to not have that Exhibit A out
5 there because if the public saw Exhibit A, they'd see how
6 terrible their plan is and that's why they got to keep it a
7 secret.

8 And so this is all just an effort to base subject
9 matter jurisdiction on votes. And it's not even claimants
10 before you, it's lawyers saying -- so one thing that's very
11 clear is that the supporting counsel want to get paid. That
12 much is obvious. I think that's very clear. And that's not a
13 basis for subject matter jurisdiction. The whole point of
14 Judge Ambro's ruling was you can't infringe on my clients' pre-
15 bankruptcy remedies to the tort system if you file in bad
16 faith, which J&J has done again after giving away billions of
17 dollars in a fraudulent transfer.

18 The other thing is there's a conflict for the firms
19 that are supporting this deal because they're saying we
20 represent ovarian cancer victims and we represent mesothelioma
21 victims, but we also represent these gynecological victims.
22 And they've created an artificial limited fund where the
23 supporting counsel have a conflict between representing their
24 own clients. Because the mesothelioma and epithelial ovarian
25 cancer claims, if the supporting counsel actually have them, I

1 would request the unredacted version of the 2019 verified
2 statement as well for my law firm.

3 I'm not ashamed of the answer when someone asks me if
4 I have medical records because I do. I have medical records
5 for all my clients. When we asked Mr. Pulaski at Page 19 of
6 his deposition, he claims to have 6,000 clients. It's very
7 clear he wants to be paid for them. But what he's not willing
8 to do is share the medical information.

9 Question, Page 19 of his deposition,
10 "Q Does your firm have medical records with respect to all
11 6,000 of your clients?

12 Privileged is the objection that's given by his
13 lawyer. He refuses to answer. And so I think what we're
14 talking about here today is gate, right. So you have a gate to
15 decide who votes. You have a gate to decide whether a debtor
16 that files in bad faith can come into the bankruptcy system,
17 and they can't. And I think everything else -- last thing.

18 They've already agreed to be bound by the deal. So
19 they come in later and say, no, this is going to be negotiated.
20 No, they're bound by the deal. They have agreed to bind their
21 clients that they're adding numbers to, so this limited fund of
22 8.9 billion, they're just adding claimants to reduce what's
23 available for everybody else. Thank you.

24 THE COURT: All right. Mr. Thompson, just don't go
25 for a second. Thank you.

1 MR. THOMPSON: You've never asked me to come back.

2 THE COURT: I know. It's troubling for me, as well.

3 (Laughter)

4 THE COURT: But I'm going to give you another -- a
5 small homework assignment. I didn't want to interrupt. But
6 I've heard reference to this Court lacking subject matter
7 jurisdiction. And it struck me as a question that the Supreme
8 Court recently touched on. In fact, they touched on it this
9 past April subsequent to Judge Ambro's decision because I know
10 he used -- he referenced subject matter jurisdiction.

11 It's the MOAC Mall Holdings case, S.Ct. April 19,
12 2023. And before the Supreme Court, and I'm not going to go
13 into it. This isn't classroom. But it was an analysis of
14 whether 363(m) is jurisdictional or not. And the Supreme Court
15 took the time to say we need to address subject matter
16 jurisdiction because there's a misconception about it and how
17 it applies in bankruptcy.

18 And they made the point, and I'm going to read if I
19 can, "The court" -- I'm sorry, bear with me.

20 "This court has clarified that the jurisdictional
21 label bears on the power of the court rather than on
22 the rights of the obligations of the parties. The
23 court will only treat a provision as jurisdictional
24 if Congress clearly states as much."

25 And it goes down further.

1 "This clear statement rule does not require Congress
2 to use magical words. But Congress' statement must
3 be clear and not merely plausible or better than non-
4 jurisdictional alternatives."

5 I think there's another quote.

6 "Statutory context further clenches the case. In
7 that case, 363(m) is separated from the Code
8 provisions that recognize federal courts'
9 jurisdiction over bankruptcy matter, which is 28
10 U.S.C. Section 1334(a) through (b) and (e). And
11 unlike other Code provisions, Section 363(m) contains
12 no clear tie to the Code's plainly jurisdictional
13 provisions."

14 What I'm going to ask because we can all form
15 different opinions, I read this and it says look at Section
16 1112(b), are there any jurisdictional -- is there any clear
17 evidence or demonstration that Congress intended in Section
18 1112(b) to refer or speak to subject matter jurisdiction. I
19 guess it doesn't because I cannot act on the requirements of
20 1112(b) which is maybe to dismiss a case for cause.

21 And, indeed, even if there's cause, Section 1112(b)
22 allows the Court in certain circumstances to continue the case,
23 not to either dismiss it or convert it. The Court must have
24 subject matter jurisdiction.

25 So what I'm saying is I'm not sure the issue that,

1 and it's raised so often, is one of subject matter
2 jurisdiction. It may be -- and ultimately it is whether or not
3 there's cause to dismiss this case.

4 MR. THOMPSON: Right.

5 THE COURT: But I don't know if you could say I can't
6 act on that or act in any way, whether it be appointing an FCR
7 or appointing an ad hoc because of subject matter jurisdiction
8 because I don't believe 1112 speaks to subject matter
9 jurisdiction at all. It's found in 28 U.S.C. 1334.

10 So that's my view now. I'm more than happy to have
11 others brief it if they wish or raise it in further pleadings
12 or tell me I'm wrong. It won't be the first time.

13 MR. THOMPSON: So I appreciate that, Your Honor. And
14 I would say I'll look into that, obviously, and I appreciate
15 the homework assignment. And I think what I'm saying is
16 subject matter jurisdiction is, is that this is a bad-faith
17 bankruptcy in which they should be denied entry.

18 Now you've got to have a -- you're going to hear
19 argument about that in a couple of weeks. You're going to make
20 a ruling on that. I'm saying that just in a broad sense that
21 as we're talking about votes, because that's really the
22 argument they're making. They're claiming that you have
23 subject matter jurisdiction, this is a good-faith bankruptcy
24 because they have enough votes. I think that's what they're
25 saying.

1 And they moved all the papers around and did a
2 fraudulent transfer so now they're in distress. But they're
3 really basing this on we got all these votes. But the lawyers
4 are the ones before you. The reason it is not the clients is
5 because the lawyers themselves have conflicted themselves by
6 signing agreements that preclude them from supporting any plan.
7 This is the risk when you asked me to come back up, Judge. I
8 was going to leave, but this is the problem.

9 THE COURT: I know. I get the good with the bad.

10 MR. THOMPSON: By signing agreements that preclude
11 them from supporting any plan other than the debtors. So if
12 there's a plan offered by a party other than the debtor that is
13 actually better for their clients, the PSA specifically prevent
14 these lawyers from supporting it. This is a conflict.

15 So the voice in support of the plan is the debtors.
16 The supporting counsel have tied themselves to the debtor.
17 They both want the same thing. They both want a channeling
18 injunction. The conditions of the term sheet are a preliminary
19 injunction, a permanent injunction, and the FCR giving a third
20 of the trust to future victims. How does that work? How does
21 an FCR who is an elected representative of the victims make a
22 necessary condition that she gives one third to everybody
23 that's ever going to get sick for any cancer alleged from talc?

24 This is a problem caused completely by J&J. All of
25 this mess in here about who's a claimant, who's not is J&J's

1 fault. If we were in the tort system, it would be very clear
2 and it was very clear. The tort system's working. Valid
3 claims are being settled. Invalid claims were not being filed
4 because they were too difficult. They wouldn't sue if you
5 didn't think you could win. Thank you, Your Honor.

6 THE COURT: You're welcome. Thank you, Mr. Thompson.
7 Counsel, did you want to respond?

8 We've gone afield a bit.

9 MR. HANSEN: Just a bit, Your Honor.

10 I'm going to try to stay to the narrow issue of our
11 intervention with respect to the preliminary injunction section
12 proceeding. I realize that things have gone further afield.

13 But where I wanted to focus back, Your Honor, is
14 we've heard an awful lot here. I think I have to address some
15 of the speculation which is all it is. We stand before you
16 today -- Paul Hastings, Cole Schotz, and Parkins & Rubio --
17 representing an ad hoc group of supporting counsel. Those
18 counsel have engagement letters with their claimant clients.
19 Those claimant clients are again approximately 56,000 members
20 which we filed last night.

21 We've got everybody saying you can't let us in
22 because we have --

23 (Music playing from gallery)

24 MR. HANSEN: I should have had that play when I came
25 up, Your Honor. Intro music is always great. That's a --

1 THE COURT: It's not my phone.

2 MR. HANSEN: The basic argument here is you can't be
3 here because you don't represent the actual claimants. So,
4 again, the clients that we have right now at the law firm
5 level, they represent the claimants. We filed a consolidated
6 2019 which is what we told you we would do last week to try to
7 ease the burden on everybody. And what we have is individual
8 law firms with their clients, with their engagement letters,
9 and then our engagement letters on top of those. So you have
10 effectively a structure in that 2019.

11 There's been tons of speculation around, well, I
12 understand those are the lawyers that signed the PSA. I
13 understand that they speak on behalf of their clients, but we
14 don't think they speak on behalf of their clients, the law firm
15 members. Your Honor, it's simply untrue. The fact that it's a
16 speculative comment. There's no evidence with respect to that.

17 The question of intervention when we go back to --
18 and, by the way, like the accusation that these law firms don't
19 keep their clients apprised, it's simply not true. They do
20 keep their clients apprised. In the 2019, we haven't filed any
21 emails or other types of evidence that says, yes, I gave them
22 specific notice of serving in connection with this ad hoc
23 committee for this purpose, for this purpose of entry into a
24 motion to intervene regarding the preliminary injunction
25 proceeding. But I don't think you need that.

1 Your Honor, it's a good-faith attempt on behalf of
2 the law firms to demonstrate to you who the claimants are, who
3 the law firms that represent them are, and who we as the
4 consolidated counsel for that entire group represent.

5 THE COURT: When you say the group, is it the group
6 of law firms or is it the group of claimants or both? It's an
7 ad hoc group of whom?

8 MR. HANSEN: Right now, Your Honor, for Paul
9 Hastings, for Cole Schotz, and for Parkins & Rubio, it's an ad
10 hoc group of the supporting counsel who represent those
11 claimants. And what we would say is those claimants have the
12 authority -- I'm sorry, those law firms have the authority in
13 their engagement letters to act on behalf of their claimant
14 clients. So we are helping them in that job.

15 If the Court says we'd like you to organize and bring
16 a claimant from each, we're not going to bring 56,000 claimants
17 and form an ad hoc committee of them. It would be pretty
18 impossible to host those phone calls. It would be hard to get
19 -- have any type of, like, interactive communication.

20 And, obviously, from the TCC's perspective, you heard
21 the U.S. Trustee say we appoint a claimant, that claimant
22 designates a lawyer, that lawyer sits on the committee with
23 their claimant, and they have meetings and they discuss. The
24 lawyers that sit on that committee also represent other
25 claimants. That's not the only claimant they represent. And,

1 obviously, they're acting on behalf of lots of other claimants,
2 and we've heard many times from TCC counsel that they represent
3 the interest of everyone. But as a fiduciary, which they do as
4 an official committee, they aren't listening to us at all on
5 that front or our clients on that front.

6 But the members law firms that serve by designation
7 on that creditors' committee, probably pursuant to their
8 bylaws, represent other parties, too. I don't know whether
9 they have authority from those other clients to serve on the
10 committee on behalf of one client in opposing a deal that's
11 come in.

12 At the end of the day with respect to the claimants,
13 they're going to vote on a plan. That's what they vote on, and
14 that's what should be put to them. And their votes will come
15 in, and we'll see whether or not it meets the threshold under
16 the Bankruptcy Code. But Your Honor asked me a direct
17 question.

18 THE COURT: Yeah.

19 MR. HANSEN: Today standing here, we represent the
20 law firms who have authority to speak on behalf of their
21 clients.

22 THE COURT: And that authority is found in the
23 retention agreements between the law firms and their clients?

24 MR. HANSEN: That's right, Your Honor.

25 THE COURT: And those are attached to the 2019?

1 MR. HANSEN: That's right, Your Honor.

2 THE COURT: So it's your position that you don't need
3 specific authorization to represent them in this bankruptcy?

4 MR. HANSEN: Well, Your Honor, yeah, our --

5 THE COURT: Not you, that the law firms don't need
6 specific as you just detailed consent or authorization to
7 represent their interest in opposing this or in supporting the
8 debtor's plan?

9 MR. HANSEN: Well, they have it, Your Honor. I mean,
10 again, the law firms are communicating with their clients,
11 right. So, obviously, those are privileged communications, but
12 they're communicating with their clients. And then they're
13 telling us we would like you to represent us and on behalf of
14 us our clients in connection with this proceeding.

15 I feel like we've elevated so much form over
16 substance and that what's happening here -- and, again, just to
17 go to Boy Scouts for a second, as I understand it, I was not
18 involved in the case. But as I understand it, the Brown
19 Rudnick firm started out representing law firms. And Judge
20 Silverstein asked them over time to get engagement letters or
21 consents, if you will, from individual claimants, which they
22 went ahead and did. And I believe they participated in the
23 case as they went ahead and did that.

24 I mean if Your Honor takes that approach, we'll deal
25 with it. We would hope that you would find it to be

1 unnecessary and that we can advance this case to the vote which
2 matters. And in the meantime, like in many cases, even if Paul
3 Hastings, Cole Schotz, and Parkins & Rubio were not here, the
4 individual law firms on behalf of their clients would still
5 have to file a 2019. The lawyers would have to stand in front
6 of you and make arguments.

7 So we are basically facilitating the voices of
8 56,000-plus claimants to come before the Court through their
9 law firms, and we are speaking on their behalf. They're also
10 not bankruptcy lawyers, right. They're lawyers in the tort
11 system. And so we are here assisting them from a bankruptcy
12 perspective here in this Court.

13 So I do think it's a distinction without a difference
14 for purposes of intervention in this motion. We've also had a
15 lot of arguments in here. At this point, I think people are
16 trying to object to our participation in anything in the case.
17 I completely disagree with that approach. And everyone seems
18 to be pointing a finger at the plan support agreement as if
19 it's a horrible contract, something that binds us and
20 eliminates any type of latitude.

21 As we pointed out for the Court before, that's an
22 agreement that this case rides in the back of, but there's an
23 awful lot of negotiation that goes forward. And as Your Honor
24 is aware, those processes, right, most large cases get solved
25 through the plan support agreement process or the mediation

1 process, candidly, with parties breaking out on both sides and
2 hopefully coming together. That's what we hope to happen here.
3 So that's not another -- that's not a reason to deny us
4 standing in connection with the motion to intervene.

5 Your Honor, a couple of other points. There's been a
6 lot said about how we represent ad claims, fake claims. This
7 was all over the TCC's pleadings. What's happening is we're
8 stuffing the ballot box with fake claims. That's -- there's no
9 truth to that statement. There's no basis for that statement.
10 And to come up here for everyone to say to you, Your Honor,
11 again that the definition of claim shouldn't be what the
12 Bankruptcy Code says the definition of claim is and you should
13 have to go resort to some other definition of claim is
14 inappropriate, number one.

15 Number two, it's inappropriate to make those kinds of
16 statements without anything to back them up. And, candidly,
17 Your Honor, as I think we mentioned at the last hearing, a few
18 of the members of the Ad Hoc Committee that we represent sat on
19 the TCC in the first case. They have now entered into plan
20 support agreements. They're in the Ad Hoc Committee in this
21 case. The claimants that they represented, they're all filed
22 claims. So many of those 56,000 claims are actually filed.
23 They have been on file, right, like actual lawsuits where they
24 have been filed.

25 So, Your Honor, again, the PSA process, this case is

1 designed to facilitate a speedy recovery. It's designed
2 ultimately to get money into the pockets of claimants as
3 opposed to waiting out, you know, if you do the average with
4 the number of claims that are here and the number of trials
5 that are held each year and you go through the appellate
6 process, I mean you could be talking hundreds of years before
7 you ultimately arrive at justice if there isn't a settlement in
8 the meantime.

9 And so, of course, bankruptcy, as you pointed out in
10 the first case in denying the motion to dismiss, is designed to
11 consolidate that. It's designed to speed the recoveries, and
12 it's designed to present a fair process. So all of this talk
13 when you get down to the narrow question about bad claims,
14 first of all, those are false statements. And, second of all,
15 they have no relevance with respect to the motion to intervene.
16 And I didn't really want to get into that, but I just feel like
17 so much has been said that we have to defend it on that basis.

18 So coming back to this narrow issue, Your Honor,
19 again, I think it is elevating form over substance. I think
20 when you look at the question of whether there is a concrete
21 interest in the outcome here, absolutely, a concrete interest
22 in the outcome. The lawyers on behalf of their clients, well,
23 the lawyers signed PSAs. The votes will come in on the plan.
24 Ultimately, it doesn't bind the claimants.

25 And do they have an interest in the outcome? They

1 do. It's a faster recovery. It's a faster process. They have
2 an interest in not letting this case get dismissed. They have
3 an interest in combating the efforts to drive it back out of
4 bankruptcy. And they also have an interest in participating
5 and trying to get to a solution with everyone. That's the part
6 that I think gets lost here in the stark positions that are
7 taken by the parties.

8 Bankruptcy is a consolidating event. People are
9 supposed to come in and try to get to a deal because by getting
10 to a deal, everybody gets better justice. That's where this is
11 supposed to go and so we applaud the Court's appointment of the
12 mediators. We appreciate the opportunity to participate in
13 that and we hope all parties take that seriously and move
14 towards that and allowing the Ad Hoc Committee to participate
15 in the question of whether or not the appeal of the denial or
16 the appeal of the grant of the motion for preliminary
17 injunction should be put up to the Third Circuit.

18 I think it just demonstrates that we have an interest
19 in the outcome of that proceeding, just like we have an
20 interest in the outcome of everything else that's happening
21 here. I'm happy to answer any other questions you have, Your
22 Honor. There was a lot said. I could keep going, but I -- I
23 guess the other thing I would point out, too, we didn't submit
24 the Boy Scouts pleadings with respect to this motion. We gave
25 those to Your Honor in a letter in connection with the

1 mediation process because the TCC opposed our participation in
2 mediation on similar grounds.

3 So, again, we didn't put it in so that it could be
4 dragged out publicly and talked about them being cynical and
5 all the rest of that, but they were the ones who have brought
6 it up and dove into it which is why I addressed it.

7 Do you have any other questions for me, Your Honor?

8 THE COURT: I don't at the moment. Thank you.

9 Ms. Richenderfer.

10 MR. HANSEN: Thank you, Your Honor.

11 MS. RICHENDERFER: Your Honor, Linda Richenderfer
12 from the Office of the United States Trustee. I was just
13 surprised to learn that something was submitted to Your Honor
14 that we did not receive a copy of. So I would ask in the
15 future the Ad Hoc Committee, in whatever form it is, also
16 provide to the U.S. Trustee's Office anything that is submitted
17 to the Court.

18 Your Honor, I've been back there learning an awful
19 lot about the Boy Scouts case, and that includes the fact that
20 Judge Silverstein ordered that notices go out to all of the
21 claimants who were represented by the law firms who wanted to
22 be part of the coalition. Ended up that not all of them
23 submitted a letter in favor of the coalition and then the
24 coalition put together a steering company. And why that's
25 important, Your Honor, is that here we have Cole Schotz and

1 Paul Hastings, they owe a fiduciary duty to their clients.

2 Who was their client? Their client are law firms.

3 The client is not claimants. The clients are law firms. Those
4 law firms represent claimants. And I was surprised to hear
5 Counsel say that the claimants support the plan because I sat
6 through a lot of the depositions for the preliminary
7 injunction. Mr. Watts (phonetic) was extremely clear. He
8 hadn't talked to his clients yet about the PSA. There wasn't
9 anything to talk to them about he said. This is just a term
10 sheet.

11 Yeah, there still needs to be a plan to be developed.
12 He says some of them may support it, some of them may not
13 support it, but that was his response to the question of, are
14 you binding your clients? And he was very clear. I'm not
15 binding my clients. I think this is a good deal. I'm going to
16 tell them I'm in favor of this deal, but I haven't even spoken
17 to them about it yet. And that was what he testified to in
18 connection with the preliminary injunction hearing.

19 My memory's not as good as to, I know there was at
20 least one other counsel who was deposed, who had signed a PSA.
21 And so, Your Honor, I'm not sure where the statement's coming
22 from that all of the collective clients are on board because
23 this group is -- it's gathered together under one concept,
24 which is we support the plan. I don't know, again, I don't
25 know what the plan is. I guess it's just the term sheet.

1 That's all they could be supporting right now, because we don't
2 have a plan yet.

3 But we don't know whether or not these claimants do
4 support even the term sheet because it hasn't gone down to that
5 lower level. This has nothing to do with whether or not people
6 who do support the term sheet and people who do support signing
7 plan support agreements should or shouldn't be allowed to
8 intervene. I'm not taking a position on that, Your Honor.

9 I just, unfortunately, we seem to have segued into
10 the standing of this group, and I just wanted to make it clear
11 on the record, Your Honor, that I need to investigate a little
12 further into the Boy Scout situation as we may be raising
13 questions ourselves. But I have to respectfully disagree with
14 the concept that all of these claimants are on board. They may
15 or may not have given authority to their attorneys to do
16 certain things but to say that they individually are on board,
17 I think is a mistake.

18 THE COURT: The Court doesn't accept -- the Court has
19 no misconception that 55,000 claimants haven't expressed a
20 willingness to adopt even the term sheet as it is.

21 MS. RICHENDERFER: Okay. Thank you, Your Honor. And
22 that's what I wanted to clarify because when I heard that said,
23 I was a little surprised because Mr. Watts was very open and
24 frank and honest about that whole scenario.

25 Thank you, Your Honor.

1 THE COURT: Mr. --

2 MR. HANSEN: Your Honor, I didn't make the
3 representation --

4 THE COURT: I understand.

5 MR. HANSEN: -- that 5,000 of them were authorizing
6 their lawyer. I never made that representation. The lawyers
7 are going to recommend it to them. They'll vote when the plan
8 comes across to them. I just want to be clear on that.

9 THE COURT: As I said repeatedly throughout the five-
10 day trial last year, I understood the points that were being
11 made. I got it. Thank you.

12 Mr. Molton.

13 MR. MOLTON: Just a little process, Your Honor, and
14 since Boy Scouts was mentioned, I don't know, other than
15 Ms. Beville, anybody in this room who's got as much experience
16 with that case as I do. I don't know if Ms. Lori (phonetic) is
17 here, but she would be able to weigh in if she were here.
18 She's not.

19 In any event, first point, I know Mr. Hansen, very
20 good lawyer, recited the mantra of getting folks paid. Suffice
21 it to say that on behalf of the members of the Committee, we
22 want people to be paid as soon as possible. We had thought
23 that the tort system was open and people would start litigating
24 and settlements would start happening. But we're back here and
25 Your Honor knows what's in front of you going forward.

1 And in any event, I want to remind Mr. Hansen that
2 for the last 19 months there have been no payments made to any
3 of the talc claimants whatsoever. I refer Mr. Hansen to what
4 goes on in North Carolina where for years, no payments have
5 been made to those asbestos victims. I want to remind
6 everybody that the term sheet is geared to payment by J&J and
7 LTL, however it worked. I guess J&J is funding the 8.9 billion
8 upon final non-appealable order. Final non-appealable order.

9 In Boy Scouts, there's money that's already gone as
10 of the effective date, and we don't have a final non-appealable
11 order. That's a condition of the agreement. To the extent
12 that this plan is an attempt to get plaintiff's warring against
13 each other, talc claimants against talc claimants, individual
14 plaintiffs against states, third-party payers against
15 everybody, estates against everybody, all feeding on the same
16 pot, and then we have the indemnification claims by Imerys and
17 Cyprus, final non-appealable order is a long way off
18 Mr. Hansen. That's number one.

19 Number two, Coalition of Abuse Scouts for Justice,
20 Boy Scouts, that was the name of that ad hoc group from day
21 one. It wasn't of the law firms, it was of the survivors. And
22 the attempt was made to tie their consent under 2019 to the
23 retainer letters, to the retainer letters, Your Honor. And
24 those retainer letters were produced in template form for
25 everybody to see. The argument was made that those retainer

1 letters contained authorization. And I know my friends from
2 the U.S. Trustee's Office were very, very involved in making
3 sure that was exactly the case.

4 Indeed, the U.S. Trustee took a very principled
5 position on 2019 in that case that extended the hearings over a
6 number of hearing dates in front of Judge Silverstein until
7 they were satisfied that the actual creditors, the claimants,
8 had given their informed consent to be represented for the
9 collective purpose of an ad hoc group in front of Judge
10 Silverstein. At the end of the day, that wasn't just the
11 retainer letters, although those had to be given out and those
12 had to be given out also in terms of understanding how the
13 payment was made or who was going to be charged, whether the
14 claimants themselves would be charged by the professionals.

15 At the end of the day, that charge would be passed
16 along to the claimants. But at the end of the day, it was
17 worked out after a number of hearings with an active, proactive
18 involvement. And the U.S. Trustee attorney will no doubt
19 recall that, although I don't believe she was specifically the
20 trial attorney on that case, was that the coalition received
21 signed consents, informed consents, for the collective action
22 by the coalition from 18,000 of the law firm's members.

23 And that's how that was resolved, and Ms. Gavel will
24 tell me if I'm wrong, if I'm mis-remembering. But one of the
25 things in terms of process, maybe, Judge, the thing to do is to

1 push this hearing to allow the U.S. Trustee's Office and the
2 other interested parties to take a look-see at what actually is
3 in the 2019, whether the attachments to the 2019, Mr. Hansen
4 says those include the retainer letters. We don't have them.
5 We need them. We need to see them. We're willing to work with
6 Mr. Hansen on confidentiality, whatever's required in order for
7 us to assess them. But we need to see those and come back and
8 deal with this in a short time. I'm not talking about a long
9 time, but a short time. These are all important questions,
10 questions that we have.

11 And, again, Your Honor, at the end of the day, if
12 Your Honor believes the Boy Scouts precedent informs Your
13 Honor, that's possibly one way to deal with this. I do note
14 that Mr. Hansen said we opposed their participation in the
15 mediation process. So the record's clear, we did not. We said
16 we agreed with the order that allowed the mediators in their
17 discretion to allow anybody they believe to participate. I
18 know that includes Mr. Hansen's group, but that is within the
19 purview now of the mediators.

20 And lastly, Judge, we've heard a lot about voting and
21 plan. Your Honor has our suspension motion in front of you
22 that's on for next week. We feel that the first issue in this
23 case is dismissal, Your Honor. You're going to hear in a few
24 minutes as to the PI certification op. We got Judge Ambro's
25 authored text order today. The breaking news that I reported

1 earlier that I reported to Your Honor in the Court that talked
2 about the expedited or accelerated nature of this bankruptcy
3 proceeding and their comfort with that in lieu of declining the
4 extraordinary vehicle of a mandamus to address that situation.

5 So to the extent if and when we ever get to voting
6 issues and other plan issues, needless to say, a lot of what
7 you heard today may be raised there and may be raised there in
8 more detail and probably evidentiary fashion. So I just want
9 to put a marker on that. And just wanted to say those things
10 just in terms of process, Judge. I hope that was helpful. I
11 didn't expect to stand up, but when I heard Boy Scouts, I think
12 I had to, so.

13 THE COURT: Thank you.

14 Mr. Hansen, very briefly, please.

15 MR. HANSEN: Very briefly, Your Honor. It just
16 sounds to me like what Mr. Molton explained was they started it
17 exactly the same way we did. They represented law firms, even
18 though they had a different name. They relied on the retainer
19 letters and over time in that case, they were asked to go get
20 information from their claimants specifically demonstrating
21 authorization.

22 So where we start today is we chose to use the name
23 supporting counsel rather than saying, supporting counsel on
24 behalf of their clients. But that's what we're doing and I
25 know you understand that, Your Honor. The other thing I'd

1 point out is that the TCC has already served discovery on the
2 Ad Hoc Committee of Supporting Counsel as well as the members
3 of the Committee themselves. So they are obviously treating us
4 as a party in interest themselves.

5 Thank you, Your Honor.

6 THE COURT: Fair enough. All right.

7 Oh, Mr. Gordon.

8 MR. GORDON: Your Honor, I've said nothing. I have
9 like one minute if I could.

10 THE COURT: That's all right.

11 MR. GORDON: Your Honor, I just wanted to say on
12 behalf of the debtor, we support the motion to intervene. I'm
13 sure Your Honor's not surprised by that. It's striking to me,
14 sitting here watching this, the extent of the opposition to the
15 motion. This is a sort of a plain vanilla -- they're only
16 asking for the right to intervene in a proceeding. And we've
17 basically heard arguments that go to the substance of their
18 position, whether or not they're even legitimate parties, do
19 they really have claimants.

20 And to me, it's consistent with what's been going on
21 in this case from the beginning, which is, over-the-top efforts
22 by this Committee to deny the majority of claimants in this
23 case a vote and a right to even be heard on the issues. And
24 this has just happened from the beginning. And I would think
25 from Your Honor's perspective, it would be helpful for you to

1 actually have available to you the views of a group of
2 claimants who disagree with the Committee in this case.

3 I mean, the Committee in this case who purports to
4 represent everybody is obviously pursuing an agenda with which
5 there are tens of thousands of claimants that disagree with
6 that, or law firms, if you want to say law firms that disagree.

7 But it seems to me, from a judicial perspective, it
8 would be helpful to the Court and all parties to allow them to
9 participate. I don't see that does any harm to the TCC. And
10 if there's a technical issue about how you describe the
11 Committee or how you want to denominate exactly who its
12 representatives are, it seems to me that can be fixed.

13 Thank you.

14 THE COURT: All right. Thank you.

15 Thank you all. Well argued.

16 All right. It seems to me, and we'll probably touch
17 on this with the next argument on the certification process,
18 that the relief sought by the motion, at least today, is rather
19 limited. It is to intervene and participate in the adversary
20 proceeding pursuing the preliminary injunctive relief.
21 Obviously, it's going to be built upon to extend to other
22 avenues in the case.

23 In listening to the argument and reading the
24 submissions, it is clear to me that this group, however large
25 it is, does not necessarily have its interests aligned with

1 either the debtor or the TCC. It could clearly come to a point
2 where it's going to try to renegotiate or the plan process
3 itself calls for always continued negotiations. And from what
4 I'm hearing, the interests as far as compensation and their
5 avenues towards compensation may differ from other creditors
6 that are being represented by the TCC.

7 So, we're speaking of potentially tens of thousands
8 of voices who do need to have representation in this case. I
9 am determining, I am ruling that this ad hoc group, as of now
10 it's Ad Hoc Group of Counsel, based on the representation that
11 each of these law firms do represent the interests of thousands
12 of creditors for whose identity they have supplied, at least in
13 a limited fashion, satisfy the requirements necessary to
14 intervene in the preliminary injunction proceeding consistent
15 with Rule 24(a)(1), 24(a)(2), and 1109.

16 I am reaching that conclusion based on a condition
17 that I'm going to require, that there will be supplemental
18 certifications filed by each of the law firms, I believe I
19 heard 20 law firms, that form the ad hoc group that they, in
20 other words, a principal from each of the firms has to certify
21 under penalty of perjury that they are authorized to represent
22 the interest of their clients, those identified clients in this
23 case and to support on behalf of these clients they're
24 authorized in this case to support the plan support agreement,
25 and that they have sent out a notice to each of their clients

1 of their intent to represent their interest in this bankruptcy
2 proceeding and to support the terms of the plan support
3 agreement, or support, however you want to phrase it, the
4 debtor's efforts to implement the plan support agreement.

5 I don't think that's burdensome. Yes, each of the 20
6 has to reach out to their own clients and confirm that they are
7 representing their interest in this bankruptcy and they're to
8 certify to this Court that they have done so and that they
9 have, based on their retention agreement, retainer agreement,
10 the authority to act on behalf of all of the identified
11 claimants in this proceeding.

12 I will give them time to do so. I will ask that it,
13 it be done in the next 30 days. In the interim, I will accept
14 argument from the Ad Hoc Committee today on the certification
15 issue and we will get to that issue in 10 minutes. I'm going
16 to take a break. My back requires it.

17 I'll ask the Ad Hoc Committee to submit a form of
18 order.

19 (Recess from 2:31 p.m./Reconvened at 2:45 p.m.)

20 MR. MASSEY: Thank you, Your Honor.

21 THE COURT: The floor and the video is yours.

22 MR. MASSEY: Thank you very much, Your Honor.

23 Jonathan Massey, proposed counsel to the TCC. We're here this
24 afternoon on the argument for motion to certify for direct
25 appeal the Court's PI ruling. And at the outset, I've got a

1 PowerPoint. But just, I'm aware of two points that are going
2 to be of interest to Your Honor. First, obviously, the Third
3 Circuit's ruling on mandamus that's just come down. How does
4 that affect things? And as Your Honor mentioned they didn't
5 take it off your plate, so you're still stuck with it. But
6 I'll talk about that a little bit more.

7 And then, second, Your Honor's remarks on the last
8 motion about the limited nature of the relief and the limited
9 nature of the motion at stake how that would fit into the PI
10 order. Because obviously we all know the motion to dismiss is
11 coming down the pike, and I'm sure Your Honor's thinking should
12 I certify the PI order or should I wait and do the motion to
13 dismiss? Is that the main event or not?

14 And I'll explain that. I believe that the PI order
15 itself involves several foundational issues, which are
16 appropriate for certification now that are purely legal in
17 nature will not be affected by any facts or evidence that will
18 come up at the motion to dismiss hearing. So those would be
19 appropriate, we believe, for certification now. But I'll talk
20 more about that. But I just wanted to acknowledge at the
21 outset the remarks Your Honor had made.

22 So the very first slide are the three certification
23 criteria, actually it's slide two on the written document, Your
24 Honor is very familiar with these factors. You've applied them
25 in actually several different certification motions that Your

1 Honor has heard, so I'm not going to read those to you. This
2 was a slide I made before the mandamus ruling from the Third
3 Circuit about why Mandamus strengthened the case for certifying
4 the direct appeal. Obviously, that's been mooted by what the
5 Third Circuit has done. But the Third Circuit relied in
6 denying the mandamus on the recognition that, "The write of
7 mandamus is a drastic and extraordinary remedy and there are
8 other adequate means for the petitioner to obtain the relief it
9 seeks." And one of those alternative avenues for seeking
10 relief is of course appeal.

11 And, in fact, the debtor, in opposing the petition
12 for mandamus in the Third Circuit, said at Page 17 of its
13 opposition, that the availability of appeal was a reason to
14 deny the petition for mandamus. Now, I think the debtor's
15 argument here is that we should go to the district court. We
16 should appeal the PI order to the district court not to seek
17 direct certification. And the last couple of bullets on this
18 page are attempting to respond to that. I mean, basically the
19 debtors' attempt is to keep the foundational issues away from
20 the Third Circuit for as long as possible, even though what's
21 really at issue here is the Third Circuit's prior decision
22 dismissing this case and what effect that has on LTL 2.0.

23 And sending this appeal to the district court for it
24 to decide what the Third Circuit meant when the district court
25 has had no prior experience or history with this case doesn't

1 really make any practical sense. It just delays things and
2 would eventually wind up going to the Third Circuit anyway, and
3 it is really in our view an illogical and impractical attempt
4 to just delay the proceeding.

5 The first criterion for applying the certification
6 question is the public importance of the case. I don't think I
7 have to talk very much about the public importance of the case
8 as a whole. Your Honor is very familiar with the importance of
9 this case, generally. It affects tens of thousands of
10 litigants, billions upon billions of dollars, and so on. The
11 real issue comes when the debtor says the PI order itself is
12 not an important ruling in this overall case because it's
13 limited in time and scope. It allows for discovery and
14 preparation. It simply says trials and appeals. It lasts
15 until June 15th. So why are we bothering with the appeal of
16 the PI ruling?

17 Well, first obviously, it affects dozens of talc
18 victims who are awaiting trial across the country. Your
19 Honor's allowed Mr. Valadez to go forward, and Your Honor said
20 I don't want to be hearing now about this whole seriatim of
21 requests for lift stay motions. But there are in fact,
22 obviously, dozens of other people out there who had trial dates
23 scheduled. Marlon Eagles (phonetic) and Meredith Eggley
24 (phonetic) are two of them in Alameda County. There's the
25 Judge Viscomi in Middlesex County has been asked to hold the 22

1 plaintiff consolidated trial, and she's declined to consider
2 that while the bankruptcy's pending.

3 I mean, ironically, the debtor told the Third Circuit
4 in asking them to stay the mandate. If you don't stay the
5 mandate, there are at least 20 meso cases that are going to go
6 to trial in the next 60 days. And they told the Third Circuit
7 that back in March. So we all recognize that there are a
8 significant number of people who are going to be affected by
9 the PI order even in the interim.

10 And the U.S. Trustee has said that further delay
11 would be unconscionable. And in prior cases, like the Gold and
12 Johns-Manville case, the Third Circuit recognized that there's
13 a lot of hardship to asbestos victims in particular, for being
14 forced to wait, and many of them will die.

15 So in our view, Even though the PI is not as broad as
16 it could be, and even though it's limited until June 15th,
17 reviewing that order would give guidance. I don't know what
18 Your Honor envisions past June 15th. This PI lasts only until
19 June 15th. So there is some reason here for appeal and getting
20 guidance on the legal status of the PI ruling.

21 The PI order itself also involves issues at the heart
22 of the second filing. Your Honor called good faith a gateway
23 question, whether it's subject matter or not, it's a gateway
24 question. And that effects any PI of any kind. It goes to the
25 Court's legal authority to issue any kind of injunctive relief.

1 And central to the PI question, in Your Honor's word, was the
2 fundamental question, whether there's a realistic possibility
3 of success. It's the lynchpin of the four prong injunctive
4 standard.

5 So, that's what Your Honor was deciding when you
6 issued the PI was really was whether the debtor, as you said,
7 would have a realistic chance of reorganizing successfully in
8 light of the Third Circuit's decision. And that's why the
9 Trustee has opposed the PI. I mean, the U.S. Trustee's
10 position is that any reorganization is futile, it's intended to
11 circumvent the Third Circuit's ruling, it doesn't have a chance
12 of success, and that's why you should deny the PI. That was
13 the U.S. Trustee's position. And that just shows that this PI,
14 unlike the first PI actually in LTL 1.0, this PI is more tied
15 in to all the fundamental legal questions at the basis of the
16 bankruptcy.

17 The first PI had some other issues that Your Honor
18 didn't think warranted separate certification. This one is
19 actually quite intertwined with the fundamental question of
20 what are we doing here in light of the Third Circuit's
21 decision. I know they didn't want to hear about mandamus, but
22 they said there were other ways to hear that question. And so
23 I think, fundamentally, that's the real question before this
24 Court on the PI as well as the motion to dismiss.

25 Now, the next slide. The question here is really the

1 debtors putting the Third Circuit's decision at issue. I mean,
2 the TCC, which represents, as you heard, all talc creditors, a
3 fiduciary duty to talc creditors, the U.S. Trustee's Office,
4 the state attorneys general, other claimants have all shown
5 that the Third Circuit decision really does foreclose the
6 second bankruptcy filing. We'll get into some of those issues
7 later.

8 But the debtors' takes the opposite view. The debtor
9 has said Footnote 18 was Mr. Kim's revelation that he read that
10 and he had the idea, oh, well this is how we do bankruptcy in
11 LTL 2.0 is we surrender the funding agreement. So the question
12 is, was that a correct reading of footnote 18? The rest of the
13 world doesn't seem to think so. The debtor believes it was.
14 And the debtor says the Third Circuit decision changed the law,
15 rendered the funding agreement void or voidable. I mean, that
16 is a question which really the Third Circuit should
17 authoritatively resolve.

18 Did they change the law in a way that nobody could
19 have predicted? I mean, that's the debtor's position for
20 why -- that's at the foundation of this bankruptcy, is do you
21 change the law on us? No one could have predicted it. The
22 funding agreement is void or voidable. We traded it away
23 because it wasn't worth anything anymore.

24 I mean, if that premise is wrong, then the rest of
25 this proceeding is just paper shuffling and we should address

1 that in the Third Circuit now. That's kind of our position on
2 why the PI order makes sense, why certification of the PI order
3 makes sense. And Your Honor has identified additional legal
4 questions throughout the last couple of hearings that are also
5 basically tied into what I've just discussed, but are worthy of
6 certification in their own right.

7 I mean, Your Honor asked, does the manner in which
8 the transactions were undertaken give rise to an independent
9 basis for finding bad faith? Possibly. The transaction
10 certainly appeared to be manufactured to create financial
11 distress in direct response to the Third Circuit's ruling. I
12 mean, Your Honor is teeing up the question of whether a debtor
13 can manufacture financial distress as a basis for good faith,
14 regardless of whether that's technically a fraudulent
15 (indiscernible) or not.

16 Leave all that aside. Just, can you create financial
17 distress by doing something that is a naked attempt to achieve
18 financial distress to fit yourself within the Third Circuit's
19 ruling? That's sort of just a straightforward legal question.

20 Next question that Your Honor has teed up. There are
21 unresolved issues such as the voidability of the 2021 funding
22 agreement. I mean, it's undisputed that the funding agreement
23 applied outside bankruptcy. It's undisputed that it applied in
24 the event of dismissal. Mr. Gordon has admitted that. It's
25 undisputed that dismissal was reasonably foreseeable, that it

1 came out of the PI hearing on the 18th and so there are no
2 facts relevant to this question at all.

3 This is a straightforward question of, actually it's
4 North Carolina law because the funding agreement is covered by
5 North Carolina law, but is there frustration of purpose within
6 these parameters? And frankly, this is like a first year
7 contracts law school exam question. It's not a question for a
8 motion to dismiss trial. It does not depend on any kind of
9 factual record beyond what we've already got.

10 I mean, Mr. Kim has actually testified twice that the
11 funding agreement applied outside bankruptcy. In his first-day
12 declaration in LTL 1.0. He reaffirmed that testimony later.

13 I know they've got an argument for why they think
14 that the reason that the dismissal was predicated on the
15 funding agreement upset their expectations. Whatever the
16 merits of that argument, we have a very dim view of the merits
17 of that argument, that's a legal argument that can be teed up
18 now and decided. I mean, there's just no -- the motion to
19 dismiss trial is not going to affect that question.

20 And then another question Your Honor is posed, as to
21 actual fraud, can the Court conclude that there has been actual
22 intent to hinder, delay, and defraud creditors? Maybe. And we
23 think, actually, that issue is unusually susceptible to a legal
24 determination. You might think that a lot of times actual
25 fraud is hard to prove and difficult, you know, it's subjective

1 intent is something that you have to have a trial about.

2 But here, we know. We know what happened. We know
3 that LTL surrendered the funding agreement so it would be
4 sufficiently distressed to invoke bankruptcy. And part of that
5 may be the void or voidability point. But that's also a legal
6 question. We know that creditors were denied access to the
7 2021 funding agreement and cash flow from the consumer
8 business. Remember that was spun off in January.

9 So HoldCo, they're going to argue that HoldCo's
10 insolvent because it doesn't have the cash flow from the
11 consumer business. That is a product of their own spinoff.
12 And courts applying the 548(a)(1)(A) actual fraud test often
13 look at badges of fraud. So if you want to look at objective
14 evidence of indicia of fraud, I mean here, of course it's here
15 in spades.

16 I mean, the transaction involved the most significant
17 asset, took place basically in secret outside the normal course
18 of business. It wasn't disclosed in advance to anybody. I
19 mean, you remember also it was listed in the March monthly
20 operating report as the funding agreement's still in place at
21 the very time when all the paperwork was being done to
22 terminate it.

23 So there's a paper record here of badges of fraud as
24 well as basically what the corporate purpose was in
25 determination and substitution agreement that resulted in the

1 end of the 2021 funding agreement. And so there are cases,
2 there are plenty of cases, here are a few, where actual fraud
3 is decided on summary judgment on basically the record that
4 we've got now.

5 And insolvency, as you know, is not an element here.
6 It would be an element for constructive fraudulent conveyance,
7 but not actual fraudulent conveyance, so all the questions at
8 the motion to dismiss trial about the financial situation that
9 LTL and HoldCo and how liquid or HoldCo's assets and all the
10 rest of that is not going to affect this issue. It's basically
11 teed up now the way it's going to be teed up later.

12 So in our view, all of those questions are tied into
13 the PI, don't need a motion to dismiss trial, are really
14 important, and the Third Circuit is the best situated forum to
15 resolve them. Even financial distress actually has a legal
16 issue, this slide, Slide 10. The financial distress angle here
17 is interesting because we know that LTL did not do any analysis
18 of its talc liabilities after the Third Circuit's decision.

19 And there are board minutes from April 2nd that say
20 that where the board acknowledged it had no estimate or
21 valuation of aggregate talc liability and that LTL's CFO wasn't
22 aware of any such analysis when Mr. Dickinson testified to that
23 on the 17th. So basically, the question here is, whether you
24 can shoot first and analyze later in bankruptcy. In other
25 words, whether you can file for bankruptcy without actually

1 having done an analysis of your liabilities and then come to a
2 motion to dismiss trial and say we've got experts and witnesses
3 and other people who are going to generate a record to
4 demonstrate that we were in fact in financial distress on
5 April 4th, even though we didn't actually do that analysis
6 ahead of time.

7 And that's actually a good legal question because I
8 think the SGL Carbon case doesn't hold this, but it disparages
9 the post-hoc rationalization by the debtors' attorneys.
10 Basically, it says, well, it's kind of late in the game to be
11 finding financial distress after you've actually filed for
12 bankruptcy. So even if you were concerned about, I mean,
13 admittedly, there will be other financial distress issues
14 decided at the motion to dismiss hearing.

15 There's going to be evidence on the financial
16 condition. I'm not denying all of that. But there is still a
17 financial distress issue, which could be decided on the papers
18 as we are now. So the legal standards governing PI relief are
19 also in our motion. I don't think that there is -- I mean, I
20 don't think we have to spend too much time on it.

21 Except I do think that the debtor in its papers
22 opposing the instant motion has said that the Third Circuit did
23 not address the issues relating to the injunction in its
24 decision. That the Third Circuit decision was all about the
25 motion to dismiss. But there's a footnote, Footnote 16, where

1 Judge Ambro went out of his way basically to say, hey, there
2 are some issues here on the PI which we need to talk about and
3 it said this Court's prior analysis lacked full discussion of
4 three pertinent factors. One, J&J'S independent tort
5 liability; two, the whole 1979 transfer agreement, the books
6 and records issue; and three, whether you can indemnify
7 punitive damages liability, whether LTL could assume J&J's
8 punitive damages liability because in New Jersey, there are
9 restrictions and limits on the indemnification obligation for
10 punitive.

11 The other thing I think that's worth saying about the
12 PI, which the Third Circuit decision effects, is that the PI
13 rests on a finding that trials against non-debtors would
14 negatively affect mediation, valuation, and estimation. But in
15 this last bullet, the Third Circuit actually took the other
16 view of what talc litigation would do. It said it would help
17 rather than hinder reorganization by providing the Court with
18 better guideposts, particularly when it's tackling valuation
19 and estimation.

20 And it dropped a footnote at that point that said,
21 hey, in the A.H. Robins bankruptcy, there was the benefit of 15
22 years of tort data. Actually, a lot of what we hear today kind
23 of supports that view. There are a lot of fundamental
24 disagreements about the values and various kinds of claims. I
25 don't want to go into that. But the Third Circuit was able to

1 say when you've got a history, a track record, stuff you could
2 look at, that benefits. So I don't think the Third Circuit was
3 saying, in fact, it said the opposite. I don't think it was
4 saying that there was irreparable harm from allowing litigation
5 against non-debtors to proceed. Okay.

6 So the last slide I have, last point I want to make
7 is just a practical point, which Your Honor has always seen
8 before, that how do you materially advance the process of the
9 case? Do you send this appeal to the district court, which has
10 had, as I said, no real experience with this case to review
11 these questions without the background that Your Honor has or
12 the Third Circuit has? And, as you said before, it seems
13 senseless to do that.

14 And the last bullet, I just want to point out, I mean
15 Congress when it amended Section 158(d)(2), said we want more
16 decisions to go to the courts of appeals. We don't like this
17 idea that the cases are going from the bankruptcy courts to the
18 district courts, they're not binding, they lack *stare decisis*
19 value and results in a dearth of appellate precedent on
20 bankruptcy. I mean, Your Honor's reference to the Supreme
21 Court case shows there aren't that many bankruptcy cases that
22 are getting decided certainly by the highest court, also by the
23 intermediate appellate courts, and Congress was trying to
24 change that in 2005.

25 So I think there's a congressional purpose here as

1 well as just practical sense, like where does it make sense to
2 send this appeal? It's primarily legal. It's tied in with
3 fundamental questions about whether this bankruptcy belongs
4 here, and it doesn't make any sense to send it to the district
5 court.

6 Thanks.

7 THE COURT: All right. Mr. Massey. Thank you.

8 Let me ask you a question and I'm trying to be
9 pragmatic. I know the rest of the week, the Circuit is at a
10 Third Circuit conference, they're not going to be doing too
11 much. Maybe that's why they rushed the decision today.

12 MR. MASSEY: Yes.

13 THE COURT: To get it off their desks.

14 Even if I were to enter an order tomorrow authorizing
15 direct appeal, that just begins a process of filing motions in
16 the Circuit --

17 MR. MASSEY: Correct.

18 THE COURT: -- and briefing schedules.

19 MR. MASSEY: Correct.

20 THE COURT: And then they may have oral argument or
21 they may not.

22 MR. MASSEY: Right.

23 THE COURT: I have a limited, and it's limited
24 compared to the prior injunction, a limited injunction that
25 expires on its own terms June 15th. Is it realistic to think

1 that you're going to get this argued in the next 30 days? Or a
2 decision, even a decision to take the appeal, let alone to
3 argue the appeal before it's mooted out. Isn't the Circuit
4 going to look at it and say it's moot? And then, let me just
5 finish, go through it all, will go the next step.

6 And if it's not moot, the reality is, I'll be
7 possibly or probably in the midst of that week, June 15th, or
8 close to it, a motion to dismiss, which will touch on the
9 various issues that, while you say the Third Circuit need not
10 address because they're factual and it's not necessary, they
11 have a bearing. Some of these issues are going to have a
12 bearing.

13 How practical is that the Circuit's just not going to
14 say wait until the motion to dismiss? First of all, there's no
15 guaranty, A, I could grant the motion to dismiss, which moots
16 out it again, so the Circuit's going to look at that
17 alternative. B, if I deny the motion to dismiss, it still
18 doesn't mean I extend the injunction. And, C, if I deny the
19 motions to dismiss and extend the injunction, it's going to
20 have to be on an application by the debtor based on, in all
21 likelihood, what I'm hearing at the motion to dismiss.

22 So how is this even practical? And why try to throw
23 this up to the Circuit now when it's in all likelihood going to
24 be mooted out or could very well be mooted out one way or the
25 other, either on my granting a motion to dismiss or the

1 injunction not being extended.

2 MR. MASSEY: Right. And I take all those points. I
3 think the reason to send it up is to give them the opportunity
4 to do what they want. If it gets mooted out, then the appeal
5 gets dismissed. If the appealed winds up being mooted, there's
6 just, you file a notice of dismissal in the Third Circuit and
7 that's nothing.

8 If it doesn't get mooted out, then what happens on
9 June 15th becomes important because this appeal could provide
10 guidance for whatever comes next. There are a lot of
11 contingencies as Your Honor's comments make clear. But I think
12 if we don't certify the appeal now, then we're basically
13 foreclosing the Third Circuit's opportunity to review anything
14 if it wanted to.

15 And denial of mandamus can read it different ways.
16 One way to read it would be, hey, there are other ways to get
17 here. Appeal is obviously the obvious one. And so here we
18 are. We're saying we're going to present you with an appeal on
19 legal questions. It's true, if you wanted to decide this
20 before the motion to dismiss, and I know we're about to discuss
21 the scheduling of the motion to dismiss, and we're all hopeful
22 that this motion to dismiss will be heard as early as possible.
23 So it may be, certainly, that you certify appeal and it winds
24 up getting mooted.

25 But if you don't certify the appeal, then you've made

1 the Third Circuit's decision for them, and they don't have the
2 opportunity to say, we would have wanted to hear that. We
3 would have expedited it. We wouldn't have heard argument, we
4 would have just ruled and there you are.

5 So we really don't know what the Third Circuit's
6 preference is, and so my position is, well, I'll offer it to
7 them, and if they want to take it, it's there. If they don't
8 want it, they'll deny the petition for leave to appeal, as Your
9 Honor said, or if it gets mooted, it gets mooted. But this is
10 kind of a point where we either foreclose that option to them
11 or we keep the option open.

12 THE COURT: One could say that's what you did with
13 the petition for mandamus. You offered it up and --

14 MR. MASSEY: Yes.

15 THE COURT: -- and they said no.

16 MR. MASSEY: Yeah. That's right. But they said, no,
17 not --

18 THE COURT: I know, it's extraordinary relief.

19 MR. MASSEY: Yeah, right. They said you've got other
20 ways to get here, so now we're in the next way to get here.
21 And so I do think, look, our position is, not just the TCC's
22 position, the U.S. Trustee's position, the state attorneys
23 general, is to fundamentally this bankruptcy, the second
24 proceeding, is not in conformance with the Third Circuit's
25 decision. So I make no apologies for saying, I think it makes

1 sense to ask the Third Circuit to get involved.

2 The debtor thinks that's obstruction. I mean, we
3 think it's actually rule following and enforcing the law. We
4 think there was a decision that was pretty clear and,
5 obviously, they have a different view from us about what that
6 decision means. But to say that the forum that rendered that
7 decision shouldn't be able to say what it means or somehow that
8 it's gamesmanship to go ask the Third Circuit to enforce its
9 mandate, I mean, that's not the rule of law and the way our
10 system of justice works. I have no apologies for that.

11 THE COURT: Fair enough. All right. Thank you,
12 Counsel.

13 Is there anyone else arguing in support of the
14 certification motions?

15 MR. GUPTA: Yes, Your Honor. Can you hear me?

16 THE COURT: Yes. Mr. Gupta. Good afternoon.

17 MR. GUPTA: Yes. Good afternoon, Your Honor. Deepak
18 Gupta from the Gupta Wessler firm. The Ad Hoc Group of
19 Mesothelioma Claimants have filed a motion for me to appear pro
20 hoc vice. So with Your Honor's permission, I'll address the
21 certification motion as well. And I also appreciate the
22 ability to pipe in here quickly by Zoom.

23 And I'll try to be quick --

24 THE COURT: Wait one second. Mr. Gordon.

25 MR. GORDON: Your Honor, Greg Gordon on behalf of the

1 debtor. I'm not sure I heard that exactly, but is he
2 purporting to appear on whose behalf? I'm not sure.

3 THE COURT: The Ad Hoc Committee of Mesothelioma
4 Victims, I believe -- Claimants.

5 MR. GUPTA: That's right. And we --

6 MR. GORDON: So a group that has not even sought
7 intervention?

8 MR. GUPTA: No, no. I'm here on behalf of the Ad Hoc
9 Group of Mesothelioma Claimants. We have filed a pro hoc vice
10 motion to appear. We're appellate counsel for the Ad Hoc Group
11 of Mesothelioma Claimants. We appeared in the Third Circuit in
12 this proceeding before. But this is my first time before Your
13 Honor.

14 THE COURT: The Ad Hoc Group, I believe, did file a
15 separate motion --

16 MR. GUPTA: Correct.

17 THE COURT: -- to certify.

18 MR. GUPTA: It's on the agenda for today. That's
19 right. And so that's all I'm addressing. And I'll be, see if
20 Mr. Gordon has any --

21 THE COURT: Well, I think we're all struggling
22 with --

23 MR. GORDON: Procedure here --

24 THE COURT: -- what seems to be a procedural
25 quagmire. But before you start, Mr. Gupta.

1 MR. MASSEY: I don't understand what the confusion
2 is. Mr. Gupta represents the Ad Hoc Group of Mesothelioma
3 Claimants. Katherine Tolleson, my client, was an appellant to
4 the Third Circuit. She opposed the preliminary injunction, as
5 did Evan Plotkin, who's represented by the Dean Omar firm, as
6 did Giovanni Sosa from the Cooney and Conway firm. We opposed
7 the PI. We joined the motion to certify for immediate appeal.
8 Mr. Gupta seeks admission pro hoc to argue on our behalf here
9 today.

10 All of these are claimants that have counsel who have
11 entered appearances for them and that opposed the PI and it's
12 on the agenda. And so this is not the situation. There's no
13 issue here.

14 MR. GORDON: So, Your Honor, just to point out, I
15 mean, there's obviously an inconsistency in positions here. On
16 the one hand, the Ad Hoc Committee of Supporting Claimants
17 files a motion to intervene. It's subject to staunch
18 opposition, but any party on the supporting side gets to show
19 up and say whatever they want, file any pleading they want, not
20 follow the rules of intervention.

21 I understand today, I guess that's where we are if
22 people have filed these things. Maybe that's our bad on that.
23 But there should be a consistent approach going forward in
24 terms of who's allowed to be heard. It shouldn't be that
25 Mr. Thompson can come up here and argue that someone shouldn't

1 be allowed to intervene when he's appearing on behalf of
2 someone who hasn't intervened.

3 THE COURT: My understanding of the distinction so
4 far to date is that Mr. Thompson represents and is representing
5 to the Court that he's representing specific claimants who have
6 taken a position in this case. And the Ad Hoc Committee for
7 Settling Law Firms is one removed. It's the law firms not the
8 claimants, which is why I tried to address it with the notice
9 and the authorization. Then everybody will be on the same
10 level.

11 For purposes of today, I'll listen to argument.

12 MR. GORDON: Understood.

13 THE COURT: Thank you.

14 MR. GUPTA: Thank you, Your Honor.

15 We'll probably spend just as much time talking about
16 my ability to be here as what I wanted to share with you
17 because I agree with everything that my friend Mr. Massey had
18 to say, and my presentation won't be extended.

19 In short, we think this Court was correct the last
20 time around when it's certified an appeal and that
21 certification of an appeal is even more appropriate this time
22 around. And I want to start, Your Honor, with the question
23 that you asked Mr. Massey, which is why do it now and could
24 this become moot?

25 And I think it's important to emphasize one thing

1 that Mr. Massey did say, which is, the question really is where
2 this appeal is going to take place and when because notices of
3 appeal have already been filed to the district court and that
4 doesn't have much to recommend it, that there be an appeal in
5 the district court on this issue. So that injects an
6 additional decision maker into the process. It injects
7 uncertainty into the process. That district court decision
8 maker may have views that are different from Your Honor and
9 they may also be views that are inconsistent with what the
10 Third Circuit ultimately holds.

11 And so on threshold legal questions, not just about
12 whether this was a good faith filing, but also, as I'll get to,
13 questions about the Court's power to act and the Court's power
14 to enjoin litigation in state court with respect to third-party
15 non-debtors with respect to their independent liability. Those
16 questions will be teed up and there could be different
17 decisions in the district court and then again in the Third
18 Circuit. And all of that just prolongs the inevitable because
19 of course there will be appeals on those questions.

20 And so I think the basic submission we're making to
21 you is, it is better to get more guidance early if that's what
22 the Third Circuit is prepared to provide. And so all you would
23 be doing by certifying is providing the Third Circuit with the
24 opportunity to take this matter rather than have it decided by
25 a district court, have it decided by the Third Circuit and

1 provide everybody, Your Honor and all of the many parties
2 involved, with guidance going forward.

3 And I think the issue that we want to focus on, and
4 this is what we focused on in the Third Circuit, is the
5 question, as I've alluded to, of the propriety of the
6 injunctive relief with respect to third-party non-debtors for
7 their independent liability. The previous Third Circuit appeal
8 I think, demonstrated that that was a very significant issue.

9 The appellants in LTL 1 raised serious unsettled
10 questions about the lawfulness of the Court's order. And this
11 Court's order itself, the most recent order, acknowledged that
12 the unsettled nature of the authority. At Page 11 of your PI
13 order, you referred to the lack of clarity regarding the
14 appropriate authority to enjoin third-party actions.

15 At Page 8 of your order, you acknowledged, recognized
16 that courts in the Circuit view the source of authority to
17 extend the automatic stay as an open-ended question. And most
18 recently, in the Seventh Circuit heard argument in a different
19 bankruptcy, in the 3M bankruptcy, where all three members of
20 the panel in that Court of Appeals expressed serious concern
21 about the propriety of injunctive relief of that kind.

22 The debtor argues in its opposition to certification
23 at Page 10, it says, "The Third Circuit has already declined an
24 opportunity to provide further guidance on jurisdiction to stay
25 actions against third parties during a bankruptcy case." But

1 that makes no sense. The Third Circuit held in the very last
2 sentence of LTL 1 that it was dismissing the case and so that
3 annulled the litigation stay ordered by the Court and made moot
4 the need to decide that issue.

5 But that issue isn't going away, Your Honor. It's
6 not a transitory issue. It's in fact central to this whole
7 bankruptcy proceeding just as it was central to the previous
8 proceeding because I think LTL has acknowledged that the whole
9 point of this proceeding, this proceeding is not worth the
10 candle unless they can get injunctive relief against state
11 court litigation against J&J over its independent liability.

12 So that issue is going to have to be addressed. And
13 it will be need to be addressed by the Third Circuit. And our
14 submission is simply that the Court ought to give the Third
15 Circuit an opportunity if it wants to take up those questions
16 now, along with all of the other threshold legal questions that
17 Mr. Massey addressed that are not fact bound.

18 And so I think all the things that the Court said
19 about the public importance of this proceeding are just as true
20 now as they were then. And even if you set aside all of the
21 things that my friend said about their arguments about whether
22 or not this court's decision is consistent with the mandate of
23 the Third Circuit, even if you set aside all of those questions
24 of good faith, there are still fundamental questions about the
25 Court's propriety to act.

1 And those can be characterized as you alluded to
2 earlier. You can characterize them as subject matter
3 jurisdiction. You can characterize them as merely statutory
4 questions about the Court's power. There are many commentators
5 that have suggested those questions have constitutional
6 dimensions as well. But those are basic questions that go to
7 the architecture of this proceeding. And so if the Third
8 Circuit wants to, and it has the opportunity to, it should
9 address them and provide guidance to everyone.

10 Thank you.

11 THE COURT: Thank you, Counsel.

12 All right. On behalf of the debtor.

13 MR. GORDON: Thank you, Your Honor. Greg Gordon on
14 behalf of the debtor, I do have a PowerPoint. May I approach?

15 THE COURT: Yes, please.

16 Thirty pages. I'm thinking the 25-page limit works
17 best.

18 MR. GORDON: This will go fast, Your Honor.

19 All right. First slide please.

20 Next slide. No slide.

21 THE COURT: There we go.

22 MR. GORDON: So, Your Honor, just to start by way of
23 introduction. And I do, I recognize there's a number of
24 slides, but I don't think this is going to take me that long.

25 So I think it's important to start with the

1 proposition that, as Your Honor just said in asking one of your
2 questions, the PI opinion is extremely limited. And
3 importantly, for purposes of this relief that's being sought
4 today, it includes an extensive discussion of the Third
5 Circuit's LTL decision.

6 And if you just step back and look at the
7 certification motions from a very high level, they don't even
8 come close to meeting the applicable standards for
9 certification. In fact, they argue the exact opposite because
10 what they're saying fundamentally is is that we have a
11 controlling decision, but you're not following it. And that's
12 the opposite of what certification is about.

13 And of course, we already have a situation on top of
14 all that, that the movements have already filed motions to
15 dismiss. And the issue of good faith is obviously squarely in
16 the middle of those motions to dismiss. It can be addressed as
17 Your Honor pointed out more directly in connection with the
18 motions. And obviously, at the time this was done, there was
19 the mandamus petition pending. That's been taken care of.

20 Next slide.

21 And Your Honor, this is just the outline of what I'm
22 going to cover here.

23 Next slide, please.

24 Next slide.

25 So, Your Honor, just briefly, on the point about the

1 order being extremely limited. As Your Honor just pointed out,
2 it's only for 60 days expires on June 15th. It enjoins trials
3 only and otherwise, it permits all other pretrial activity to
4 proceed, including discovery. And it's also important to note
5 that since the time you wrote the PI order, you've lifted the
6 stay as to the Valadez case and that trial is set to proceed.

7 And I think it's important to note that no other
8 party had sought similar relief. So you saw on a slide just a
9 few moments ago some references to claimants who purportedly
10 have other trials that could have gone in the 60-day period.
11 To my knowledge, that wasn't brought to the attention of the
12 Court. And the one thing that was, Your Honor took care of it
13 to the point that I think a couple of times in your PI order,
14 you found that and believed that the talc claimants wouldn't be
15 harmed by the limited relief you were entering.

16 Next slide, please.

17 Next slide.

18 So, Your Honor, this just sets forth the applicable
19 principles. It really boils down to three things. Is there no
20 controlling decision on a question of law? Does the matter
21 involve an issue of public importance? And will certification
22 materially advance the case?

23 Next slide, please.

24 Again, fundamentally, Your Honor is aware of this
25 from before. The idea is to basically ask an appellate court

1 to provide guidance on questions of law to basically build up
2 or develop bankruptcy court precedent. And I think when you're
3 considering the motions before the Court today, you have to
4 think in those terms. Is there any legal precedent that would
5 be developed by certifying your decision to the Third Circuit?

6 Next slide, please.

7 Again, I'm not going to spend much time on this, but
8 generally fact bound appeals aren't suitable for direct appeal.
9 I think, fundamentally, what you're being asked to is to
10 certify a fundamental question of good faith on the basis that
11 that's a legal issue I think is what's being represented to the
12 Court when in fact, it's a very fact-bound issue. Whether
13 financial distress exists or not is very fact bound. I think
14 it's obvious from the Third Circuit's ruling in late January
15 that the Third Circuit viewed it as a fact-bound issue.

16 Next slide.

17 And, again, to the contrary, if you have pure
18 questions of law, then it's a different story with respect to
19 certification.

20 Next slide, please.

21 And next.

22 So part of the problem here I think with these
23 motions is that the claimants are trying to sort of fit a
24 square peg in a round hole because they're trying to make, and
25 their focus is on -- they're trying to make this all about good

1 faith. And so when you look at the issue they're raising
2 fundamentally in connection with the injunction, it's LTL's
3 alleged lack of good faith in filing the second case.

4 But if that's your issue, and that's what they're
5 claiming and that's what you heard again today, no one can take
6 the position there's an absence of controlling authority on
7 that. We have a controlling opinion from the Third Circuit
8 that was just issued on January 30th. And, again, Your Honor
9 extensively discussed it. The debtors now taking the position
10 that that's not binding and the movants, otherwise, are
11 conceding that it's a controlling decision. And in fact, they
12 say the question of good faith has been settled in the Third
13 Circuit. So again, that's all the opposite of what the
14 standard is for certification, which fundamentally goes to, is
15 there an absence of controlling precedent here? Obviously, all
16 sides agree that the controlling precedent exists.

17 Next slide.

18 And, frankly, even if it that weren't the case, in
19 our view, certification still wouldn't be appropriate in this
20 instance because the PI standard here only very indirectly or
21 tangentially considers good faith. It comes up as Your Honor
22 noted in your opinion as one of the prongs for preliminary
23 injunctive relief, the reasonable likelihood of success prong,
24 which as Your Honor noted, requires a showing of a reasonable
25 likelihood, not a certainty of a successful reorganization.

1 In addition, Your Honor acknowledged the limited
2 record before it and said the factual record is too uncertain
3 and undeveloped to make a finding regarding good faith and *sua*
4 *sponte* dismiss the case. And I think that's really a lot of
5 what these certification motions are about. These claimants
6 want to take issues that are more properly heard and considered
7 in dismissal and have them heard through this vehicle based on
8 a limited record that they think puts them in a better position
9 to prevail.

10 And, again, I think Your Honor recognized, and this
11 will be our view, that questions like those, questions about
12 good faith, questions about financial distress, questions about
13 dismissal, they should be raised and considered in connection
14 with the motions to dismiss, which Your Honor has already
15 indicated are going to proceed on a prompt schedule.

16 Next slide, please.

17 And of course, again, you can see all the motions to
18 dismiss that have already been filed. They all raise the issue
19 of absence of good faith. That's the centerpiece of all of
20 them. And so they overlap completely with what's really the
21 focus of the arguments that the claimants are seeking to have
22 you certify to the Third Circuit in connection with the PI
23 order.

24 Next slide.

25 I'll skip over this, obviously, because that no

1 longer exists. It is interesting though. I think Mr. Massey
2 said that we're trying to have it both ways, the way we've
3 argued with respect to the mandamus. I would say they're the
4 ones, the claimants are the ones trying to have it every which
5 way by basically making the same arguments in a multiplicity of
6 context. So this slide is just intended to show the
7 duplication.

8 And, again, you can skip the middle column, but the
9 allegations they're making in the dismissal motion overlap very
10 much with what's in the certification motion. And, obviously,
11 with the arguments that were made in connection with the PI
12 order. They're all the same.

13 They're all the same. The big difference is they
14 were indirect and tangential in the PI context. They were done
15 on an expedited basis. There was a limited record. And I
16 think Your Honor was correct in your ruling and thinking about
17 these issues could be handled more directly in connection with
18 dismissal as opposed to in the PI.

19 Next slide, please.

20 Here, just to say good faith is obviously directly
21 relevant to the dismissal. That's what the standard is all
22 about under Section 1112. They can be decided on a full
23 factual record. And Your Honor noted in your opinion the fact
24 that the Third Circuit was critical of Your Honor's findings,
25 your factual findings in connection with the dismissal ruling

1 in the first case.

2 And we should have an opportunity, we, the debtor,
3 should have an opportunity and Your Honor should have the
4 opportunity to consider those questions based on a full and
5 complete record.

6 Next slide, please.

7 The other thing I think it's important to note, and I
8 think Your Honor recognized this as well in the PI opinion, is
9 that you indicated that you found it difficult in the first
10 case to identify controlling issues that hadn't been addressed
11 in connection with preliminary injunctions and mass tort cases.
12 And, fundamentally, you sort of went back and relied on your
13 rulings from before and you had cited a lot of authority
14 before. And I think ultimately the McCartney Third Circuit
15 case was the one that you felt addressed most of the issues
16 that were raised by the other side from a legal perspective in
17 opposition to the PI.

18 But among other things, you found an identity of
19 interest between the protected parties and the debtor. You
20 found shared insurance coverage, you found the existence of
21 indemnification obligation, and you also found that continued
22 litigation outside the case would adversely affect the debtors'
23 ability to reorganize in the case because the same claims will
24 be being liquidated outside of bankruptcy while efforts were
25 being made by the debtor to have them resolved and paid in the

1 bankruptcy.

2 And as Your Honor noted, there's nothing in the Third
3 Circuits January 30 opinion that changed any of that analysis.
4 And, again, I think that's a very important point for
5 certification. The arguments have been made that the Third
6 Circuit has already weighed in, therefore, you should want to
7 get this to the Third Circuit immediately. Well, the Third
8 Circuit didn't weigh in on the PI. Now it's true, as was
9 pointed out just a few minutes ago, there was a footnote or
10 maybe footnotes that *indicta* raised some questions, but
11 otherwise there was no ruling by the Third Circuit on the PI
12 and certainly no pronouncements by the Third Circuit about the
13 law with respect to preliminary injunctions or the extension of
14 the automatic stay in a bankruptcy case.

15 Next slide, please.

16 Now I think it was Mr. Crouch separately raised the
17 jurisdictional issue. Your Honor actually cited a case this
18 morning that Mr. Thompson, which is part of arguments coming up
19 in the Bestwall hearing on a motion to dismiss for lack of
20 jurisdiction based on the U.S. Constitution. But the point is,
21 this is another issue that just doesn't warrant certification.
22 There's not an absence of controlling authority. There's not a
23 disagreement among the Circuits. I mean, this is a very
24 straightforward analysis with respect to jurisdiction.

25 And Your Honor, again, I think noted that, the law

1 covered that. I thought your opinion went into great deal in
2 terms of the applicable law on jurisdiction. It supported your
3 jurisdiction to entertain a PI request.

4 Now, we've lost our -- do we have a bandwidth problem
5 again?

6 MULTIPLE SPEAKERS: Proceed. I can cut that.

7 MR. GORDON: It's not on here.

8 UNIDENTIFIED SPEAKER: Maybe disconnect. Whoever's
9 doing screen share, stop screen share.

10 MR. GORDON: Could we try stopping and starting the
11 screen share? See if that will work.

12 THE CLERK: It's back up?

13 MR. GORDON: No.

14 THE COURT: Not on the big screen. There's a
15 [indiscernible).

16 So we're on Slide 19. Maybe the cap should be 20.

17 (Laughter)

18 MR. GORDON: You have to admit that I'm going pretty
19 fast. Well, you don't have to.

20 THE COURT: Oh, no it's an improvement over the 90
21 page slide you had the other last week.

22 MR. GORDON: Fair enough.

23 The suspense is building and the best slides are
24 always the last few.

25 THE COURT: Here we go.

1 MR. GORDON: Okay. And I think, again, this slide is
2 just intended to point out that, I think the first go-round,
3 the reason that you certified the PI order the first time was
4 because, in your view, it didn't make sense to have that
5 proceed by way of a different -- or have a different appellate
6 status in the motion to dismiss. It wasn't because you found
7 that it separately warranted certification under the standards
8 and you kind of reiterated that in connection with the request
9 by -- for certification by the States of New Mexico and
10 Mississippi, but there you also certified it because of the
11 issues about police power, the police power exception.

12 And, again, if you look at the LTL opinion, the Court
13 had an opportunity, if it wished, to weigh in on jurisdiction
14 or any other legal issue with respect to the preliminary
15 injunction and did not do that.

16 Next slide, please. Next slide, please? Next.

17 So, again, I'll just cruise past this. This issue of
18 public importance is a standard that's viewed narrowly and the
19 standard is high, but let's go to the next slide, please, 22.

20 So, in our view, it's clear this is not a matter of
21 public importance and, number one, it's because there isn't a
22 question of law lacking precedent, controlling precedent. It
23 doesn't transcend the parties in the sense that, again, what
24 the movants are arguing simply is that Your Honor has
25 misapplied an existing authority from the Third Circuit and

1 misapplied it to the facts of this case.

2 And that's what, in my mind, makes this very
3 different from the certification from the first case. You
4 know, the other side is basically saying to you, you certified
5 it before, you should certify it now. But unlike before when
6 you had a dismissal request in front of you or you had entered
7 a dismissal order, that was about the entirety of the
8 bankruptcy case, here we don't have that. There's no motion to
9 dismiss before the Court. Again, we're back to an order that's
10 very, very narrow in scope that will expire by its own terms in
11 a matter of weeks, and all that's -- and this order that's up
12 is the type of order that Your Honor found before wasn't worthy
13 by itself of certification.

14 Next slide, please.

15 So here, unlike before, there's no concurrent
16 dismissal order. The key question that the other side is
17 focused on, and that question being good faith, was only
18 addressed on a preliminary basis and, again, on a limited
19 record. Since then, multiple motions to dismiss have been
20 filed and are pending that raised that issue over and over
21 again.

22 And so, again, from a public importance perspective,
23 it seems to us that make this situation completely different
24 from the situation Your Honor faced back in the first case.

25 Next slide, please.

1 And the point as well is appellate review is
2 otherwise available because, you know, the other side is
3 obviously anxious to get this good faith question and the
4 dismissal question back before the Third Circuit and, they're
5 so anxious to do so, they're trying to do it through a PI
6 order. That's the square peg in the round hole concept. But
7 they can pursue an appeal if Your Honor -- and, of course, we
8 don't know how Your Honor is going to rule, but if Your Honor
9 rules against the motions to dismiss, decides to deny them,
10 they can appeal it then; they can seek certification then. And
11 they even have a right to appeal later in the case, if we get
12 to the point where there's plan confirmation where Your Honor
13 has to make a finding of good faith, that issue can be raised
14 at that point.

15 So this is not a situation where like you see in
16 other certification situations where appellate review would not
17 otherwise be available or appellate review would be lost for
18 some reason.

19 Next slide. Next slide.

20 And, again, this concept of materially advancing the
21 case, the other side is making a big push here that we're going
22 to appeal this to the Third Circuit anyway, this will
23 materially advance the case. And, of course, you found this
24 before. When I went back and looked at your ruling before,
25 Your Honor was very focused on this. I think it was the first

1 standard that you addressed and you talked about the extent the
2 record had been developed and how no real purpose would be
3 served in the District Court because there were no further
4 findings that would need to be made by the court. It was --
5 basically, everything was there, it was in a position to be
6 resolved by the Third Circuit.

7 Next slide, please.

8 Well, that's a far cry from where we are here with an
9 order that's limited in time and scope, where there's no
10 concurrent dismissal order.

11 And, again, I think the important thing to note, it's
12 not inevitable this appeal would even reach the Third Circuit.
13 That's the other point. They argue that we're going to be in
14 the Third Circuit anyway and, frankly, in this situation, I
15 highly doubt that. Number one, because the order ends on June
16 15th and, as Your Honor pointed out, you'll probably never get
17 that far.

18 And, number two, it's going -- in my view, it will be
19 taken over by the motions to dismiss because that's really what
20 the focus is, that's what they've asked for. Every -- almost
21 every lawyer that comes to the podium for the other side makes
22 a plea that this case should be dismissed. They ask it to be
23 *sua sponte* dismissed; Your Honor didn't do that, based on the
24 incomplete record. I think you indicated as well you thought
25 that would deprive the debtor of due process.

1 Obviously, that was up to the Third Circuit in some
2 form in connection with the mandamus; they haven't done that
3 either, they denied the mandamus.

4 And so this idea that it's inevitable that this would
5 ultimately get there, it just seems to me, is not -- that's not
6 a foregone conclusion because I don't see that it ultimately
7 serves any purpose, because what they really want, what the
8 other side is really asking for is dismissal. And if you think
9 about it, how is this going to work that if you allow this to
10 go to the Third Circuit, that you have two appeals ultimately
11 that are there, potentially, that raise the same issue, one
12 raises it directly, the other raises it indirectly, one
13 presents it on a fully-developed record, the other presents it
14 on a partial record put together in connection with an
15 expedited process that led to a very limited, short-term order.
16 That to me just seems to utterly belie a request for
17 certification and show that the standards can't even remotely
18 be satisfied with respect to an order as limited as this order
19 is.

20 Next slide, please. And next.

21 All right, before I get to that, Your Honor, I just
22 want to check my notes for a couple of things.

23 One of the counsel, I think it was Mr. Gupta, had
24 argued that -- and I think Mr. Massey did as well, that the
25 legal questions should be sent to the Third Circuit right away

1 and that this is basically an affront to the Third Circuit's
2 decision, this case is, and they should have an opportunity to
3 look into it, but what are the pure legal questions that we're
4 talking about?

5 I think what they're talking about is good faith and
6 I think they're talking about financial distress, and I would
7 submit to Your Honor that those are highly fact-bound
8 questions. I think the Third Circuit believes they're highly
9 fact-bound questions, I think that's one of the -- probably the
10 primary reasons they sent it back to Your Honor to actually do
11 the fact finding that they've asked for.

12 And, again as Your Honor noted, the Court was
13 critical before with respect to the factual findings that were
14 made in connection with the dismissal motion the first time
15 around.

16 I think, again, another point -- and I think this is
17 telling, this argument that's been made, I think Mr. Massey
18 made it that we're not permitted to put in evidence that the
19 committee characterizes as post hoc rationalization of our
20 decision to file bankruptcy a second time. And I would submit
21 that there's no legal principle that would support that point
22 of view that there's some limitation on the evidence that we
23 can put in. In other words, that we can't put any evidence in
24 beyond what might have given to a board in the board meetings
25 leading up to the filing.

1 And, again, that to me doesn't make sense, but it's
2 transparent in that, to me, that shows that what the real goal
3 here is to get the fundamental question of good faith to the
4 Third Circuit on a record that they know is a very limited
5 record in hopes that they can convince the Court based on an
6 incomplete record and very little -- and a constrained ability
7 by Your Honor to actually make the fact findings that should be
8 made in the hopes that they're in a stronger position to obtain
9 a dismissal from the Court, and I would say that that's not
10 appropriate.

11 So, Your Honor, in conclusion I would just say that
12 this is a situation that's very different from the situation
13 Your Honor had in the first case in connection with the
14 dismissal ruling and the PI ruling, which were concurrent.
15 This is a very limited opinion, it was -- as you acknowledge,
16 it's on a very limited record, and it's not the type of opinion
17 that's suitable for direct appeal.

18 There is no lack of controlling authority. In fact,
19 to the contrary, all the parties to this proceeding agree that
20 there is controlling authority, they just have a disagreement
21 as to how that controlling authority should be applied to the
22 facts and, again, that's not a basis to certify.

23 The issue that they actually want to litigate is more
24 directly pending in front of Your Honor and, for that reason
25 and for these others, a direct appeal won't advance this case,

1 what it will do is just distract the parties and require them
2 to focus on the good faith issue in the Third Circuit in an
3 indirect context, on an inadequate record, at the same time
4 they're trying to more fully litigate the issue in this Court
5 and provide Your Honor with an opportunity to more fully make
6 the findings that the Third Circuit would expect you to make.

7 THE COURT: All right.

8 MR. GORDON: Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Gordon.

10 Mr. Hansen? I'll note, I got a text from law clerks
11 that said, if we have a slide limit, there would just be more
12 bullet points on each slide.

13 (Laughter)

14 THE COURT: So it's not going to get anywhere.

15 MR. HANSEN: No slide deck for me, Your Honor. Chris
16 Hansen with Paul Hastings on behalf of the Ad Hoc Committee of
17 Supporting Counsel.

18 Your Honor, Mr. Gordon, towards the end of his
19 presentation, got to where I wanted to start, which is there's
20 an intentional conflation of issues here. The TCC and the
21 other parties who are seeking the certification are very clear,
22 they're not really trying to overturn the PI ruling; they're
23 trying to get the case dismissed.

24 And, to Mr. Gordon's point, we're about to undertake
25 a trial on the motion to dismiss and the Third Circuit should

1 hear that on appeal on a full record; it shouldn't hear it on a
2 record dealing with the preliminary injunction where there
3 hasn't been a full record.

4 In some ways, Your Honor, I actually think it would
5 be inappropriate to send this to the Third Circuit as a result
6 of that, sending them an incomplete record when you know that
7 you're about to undertake a trial on a complete record that's
8 going to go up. And, to Your Honor's own point, there may be
9 an issue of mootness that comes along because you're going to
10 be -- if you think about the timing for a briefing argument and
11 decision, and they've said we want to bring that on while
12 trying to get the case dismissed. Well, while you're hearing a
13 trial on the motion to dismiss, you may be deciding that very
14 issue. So we think, from the ad hoc's perspective, that that's
15 inappropriate to send it to the Third Circuit on that basis.

16 When you go back to your narrowly-tailored ruling
17 from the preliminary injunction perspective, again, it raises
18 that question of mootness. You may or may not need to extend
19 it in order to protect the process that plays out in connection
20 with the motion to dismiss process, as well as the plan
21 process, but it still raises that mootness question. And when
22 you look at the factors for direct certification on appeal, as
23 Mr. Gordon noted, we don't believe that the TCC or any of the
24 other movants meet the standards.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Counsel.

2 Mr. Massey?

3 MR. MASSEY: Thank you, Your Honor. I won't burden
4 you too long, I know it's been a long day. Jonathan Massey,
5 proposed counsel for the TCC, just a few points.

6 The notion that this is a -- that the issues here are
7 fact-bound is just a slogan, but, you know, void/voidable,
8 what's fact-bound about the void/voidable argument? We know
9 that the 2021 funding agreement applied outside bankruptcy, we
10 know that it applied in the event of dismissal, we know that
11 the debtor for -- debtor's counsel has represented that the
12 Third Circuit's decision was even foreseeable. Did the Third
13 Circuit change the law? Is that a factual issue? No, those
14 are all legal questions.

15 I don't want to get out my PowerPoint again. Slides
16 7 through 10 of my PowerPoint outlined a bunch of legal
17 questions that Your Honor has framed on the PI. In deciding
18 the PI order, Your Honor recognized these kind of foundational
19 questions about whether this was an actual fraudulent
20 conveyance, whether there's void/voidable, whether you can
21 manufacture financial distress by evading the Third Circuit's
22 mandate, none of that is factual.

23 Yes, there will be a trial on the motion to dismiss
24 and I'm very glad to hear the debtor's intent in creating a
25 full record because you're about to hear now, or very shortly,

1 all the efforts that are being made to create this full record
2 that the debtor is now in support of, but the point is there
3 are distinctive legal questions which will not be affected by
4 the motion to dismiss trial. And, actually, Mr. Gordon even
5 said, when it comes to the sort of -- the financial distress
6 legal question of whether you can shoot first, file for
7 bankruptcy, and then analyze what your financial distress was
8 after the fact, Mr. Gordon said, well, that rule wouldn't make
9 any sense, but that's the whole point, it's a rule. That's
10 going to be -- actually, the Third Circuit seemed to express
11 support for that rule in SGL Carbon. But, in any event, that's
12 an issue that's distinct from the motion to dismiss.

13 The next point I want to make, the debtor's argument
14 that controlling precedent exists, and in fact they -- if you
15 look at slide 12 -- I don't want you to look at their slide 12,
16 but I'll just tell you it says debtor agrees LTL provides
17 binding guidance. In their view what that means is, yes, the
18 Third Circuit told us exactly what to do, it said in Footnote
19 18, surrender the 2021 funding agreement and create this
20 void/voidable theory; that's what the Third Circuit's
21 controlling decision is, in their eyes. You know, that's
22 almost -- it's almost a parody. That proves the reason why the
23 Third Circuit -- why there should be certification, why the
24 Third Circuit should decide that question because, if that's
25 what they think the Third Circuit means and the rest of the

1 world -- not just the TCC, but the U.S. Trustee, the State
2 Attorney's Generals and everybody else reads the Third Circuit
3 decision quite differently -- then I think certification,
4 they've proven our case.

5 The last point -- well, last couple points they said,
6 wait for the motion to dismiss because that's where all the
7 real issues are going to come up. And, as I said, there are
8 legal questions, which are separate, but even if you look at
9 their slide 16, they say, oh, well, they're making the same
10 arguments on the PI that they made in the motion to dismiss.
11 That's what I was trying to say before, there's this inter-
12 linkage, which actually wasn't present in LTL 1.0, between the
13 PI and the motion to dismiss. As Your Honor recognized when
14 you read your decision on the PI order, it turns on the
15 likelihood -- the probability of success of reorganization,
16 which in turn relies on their compliance with the Third
17 Circuit.

18 Mr. Gordon had the scenario that there might be two
19 appeals simultaneously and that somehow would be problematic.
20 In our view, that's quite easy: they would be consolidated. I
21 mean, if there was an appeal from the PI order and then there
22 was a subsequent appeal from a motion to dismiss order, weren't
23 mooted or whatever, the Third Circuit would just take them and
24 consolidate them. That's not a big deal.

25 When Your Honor certified the New Mexico and

1 Mississippi PI order, the Third Circuit sat on that, didn't
2 rule on it because it knew it was going to do something with
3 the dismissal. I mean, the Third Circuit is quite able to
4 stage things and coordinate things as it wants. And, you know,
5 the point I made before, if you don't certify, you're making
6 the decision for them.

7 The other last point is this notion that the -- we
8 keep hearing the PI order is going to expire on June 15th, and
9 that's what Mr. Gordon said, and that just raised the question
10 to us about whether they will seek to renew it after that date
11 because, obviously, if they don't, that would be something that
12 they could say on the record and that would clarify things, and
13 that might change the complexity of the PI order. If they
14 intend to renew it for another period of time, then I think it
15 points up the need to certify the existing order because that
16 will provide guidance on whatever subsequent orders are coming
17 down the pike.

18 So, you know, that's -- if they would like to clarify
19 whether they will be seeking an extension, that would be
20 relevant, I suppose, to how Your Honor might think about this.
21 But if the PI is going to be extended, they're going to seek
22 further extensions, then I think it just makes it more
23 appropriate to hear -- to get guidance, authoritative guidance
24 on the existing PI order.

25 Thank you very much.

1 THE COURT: Thank you, Mr. Massey.

2 All right, thank you all again, well-argued.

3 There are two premises put forward by the TCC with
4 respect to the certification motions which I have trouble with;
5 one is that I should, essentially, not stand in the way, let
6 the Circuit decide what issues it wants to address. To me,
7 that flies in the face of the role the Court plays under 28
8 U.S.C. 158(d)(2). We're a gatekeeper.

9 There would be no purpose served by the Court
10 certifying an order for immediate review if I was just to stand
11 aside and let them decide what they want to keep. I believe
12 Congress, in implementing the process and the circuits depend
13 on the lower courts, the trial-level courts, to act as a
14 gatekeeper, identify which judgments or orders are ready and
15 appropriate for review.

16 The second issue is that this is really just about
17 which court is going to hear it, the District Court or the
18 Circuit Court. I don't, frankly, envision the District Court
19 hearing the appeals in this matter.

20 We have an injunction, a preliminary injunction
21 that's set to expire on June 15th. I have a motion to dismiss
22 -- several motions, seven, I think, that will be tried. And,
23 as I've said before, if I grant any one of the seven or all
24 seven -- I can't imagine picking and choosing, but if I grant
25 the motions, then it's all academic, there's no case. If I

1 deny the motions, it doesn't mean the injunction continues
2 because that's already terminated. I have to affirmatively
3 extend the injunction, which requires a factual showing,
4 probably addressing the very concerns that the Third Circuit
5 identified as being problematic from the first go-around, in
6 which case there's a new order.

7 And I will tell you right now that, in the event I
8 were to deny the motions to dismiss and extend the injunction,
9 I can't see not certifying it for the appeal to the Circuit at
10 that point, but that's -- the Circuit will benefit from a full
11 record, the Court will benefit from a full record, and the
12 Circuit will benefit from not having issues that are moot.
13 There will be a new order entered extending -- possibly
14 extending the injunction based on an evidentiary record that
15 may be conjunction with the motion to dismiss -- we'll have to
16 discuss that -- or there won't be anything in front of the
17 Circuit because I will dismiss the case.

18 It makes no sense to me. It does not further advance
19 this case. In fact, to me, it does the opposite; it places
20 hurdles for an effective appellate review to certify the
21 existing order at this juncture.

22 While I and my law clerks think that the issue as to
23 whether 362 or 105 serve as a proper basis to stay third party
24 actions is interesting -- you know, to some extent, we're all
25 nerds, you know, these issues interest us -- but I'm not sure

1 it rises to the level of public importance, at least out of the
2 context of dismissal of this case, and nor do I think that
3 there's a lack of controlling law. Yes, we have LTL I, the
4 Third Circuit's opinion, and we have McCartney. If I am acting
5 outside the scope of those decisions, if I have acted to date
6 outside the scope of those decisions, well, that's what
7 appellate review will be and the Circuit will make it clear at
8 that point in time, if it ever gets there.

9 So, for these reasons, I don't believe the criteria
10 under 28 U.S.C. 158(d)(2) have been satisfied, it's without
11 prejudice to raise these issues again with further judgments or
12 orders, and I'll ask debtor's counsel to submit forms of order.

13 So what's left for today, I have a ruling to read and
14 also a discussion about what's happening on the trial.

15 Ms. Beville?

16 MS. BEVILLE: And I apologize, Your Honor, I don't
17 want to take us backwards, but in the effort to be most
18 efficient going forward, you ordered in connection with the
19 intervention that notice be sent out to the individual
20 claimants seeing their authority and consent, I just wanted to
21 confirm for the record that that required affirmative consent
22 and authority or -- I just wanted to make sure that part was
23 clear.

24 THE COURT: Well, okay, let me clarify it. I
25 required that the attorneys who are the -- who compose the

1 committee at this juncture, that they certify that they have
2 notified their clients that they are engaging -- two things --
3 they have to certify that they have the authority under their
4 current retention agreements to represent their clients in this
5 court and that they are to notify the clients that they've
6 taken a position in support of -- that they are, in doing so,
7 taking a position in support of the debtor's proposed plan or
8 term sheet or tentative agreement.

9 MS. BEVILLE: Okay. And so, to be clear, you are not
10 requiring that the clients --

11 THE COURT: No.

12 MS. BEVILLE: -- themselves respond affirmatively --

13 THE COURT: No --

14 MS. BEVILLE: -- just that the law firms --

15 THE COURT: -- that they have notified.

16 MS. BEVILLE: -- represent to you affirmatively that
17 they've notified the clients?

18 THE COURT: For my purposes, that suffices.

19 MS. BEVILLE: Okay. Thank you, Your Honor.

20 THE COURT: You're welcome.

21 All right, do we want to discuss the trial?

22 Good afternoon, Mr. Winograd.

23 MR. WINOGRAD: Good afternoon, Your Honor. Michael
24 Winograd from Brown Rudnick; I'm proposed counsel for the TCC.

25 Your Honor, we have, as Your Honor instructed, met

1 and conferred on behalf of the TCC with debtor's counsel and
2 the U.S. Trustee, and several others participated in the emails
3 as well. We have exchanged proposed schedules back and forth,
4 which many of the deadlines are not actually far off. It
5 appears there are two sticking points, the hearing date and the
6 date for the motion to dismiss opposition brief.

7 And, if I may, Your Honor, I'd just like to --

8 THE COURT: The date for --

9 MR. WINOGRAD: The motion to dismiss objection by --
10 the date -- the deadline to file --

11 THE COURT: For the written submission?

12 MR. WINOGRAD: For the written submission, yes, Your
13 Honor.

14 THE COURT: Okay.

15 MR. WINOGRAD: I apologize.

16 THE COURT: No, that's all right.

17 MR. WINOGRAD: And, if I may, Your Honor, I'd just
18 like to start with the hearing date. And I'd like to really
19 just point out, you know, why this comes up. We had thought
20 this was resolved at the last hearing, debtors disagree with
21 that and, you know, they will present their side, but let me
22 just make three initial observations, Your Honor.

23 First of all, again, we thought the Court had
24 resolved that this would take place beginning on June 12th at
25 the May 3rd hearing when it indicated there were constraints in

1 the Court's calendars, that a limited amount of extra would
2 allow for what the Court called limited discovery, on page 149
3 of its opinion. It instructed a meet-and-confer. Your Honor,
4 I took that to mean a meet-and-confer on the schedule with
5 respect to the pretrial schedule.

6 And the Court said if there is no agreement
7 ultimately on the week of June 12th that we'll just proceed on
8 May 23rd. And, again, Your Honor, we are prepared to proceed
9 on May 23rd.

10 The next point, Your Honor, that I want to make to
11 you is really a, I think, dispositive one. The Third Circuit
12 came out today and denied our petition for a writ and, in doing
13 so, it expressly said, the very first thing that it said is
14 we're denying this extraordinary relief to allow the Bankruptcy
15 Court to continue on the expedited basis set by the Bankruptcy
16 Court.

17 Now, why did it say that? If you look to what LTL
18 told the Third Circuit yesterday, on May 8th, in its
19 submission, it said two things. Number one, on page 12 of its
20 submission, that the Bankruptcy Court kept it on a tight time
21 frame with respect to the preliminary injunction. It then went
22 on to talk about the motion to dismiss at pages 14 and 15, and
23 it said, motions to dismiss have been filed -- and I'll quote
24 -- "and the Bankruptcy Court has set aside June 12 to 16, 2023
25 for a hearing."

1 That is what LTL told the Third Circuit. The Third
2 Circuit denied a writ, specifically saying to allow these
3 proceedings on the motion to dismiss to continue on an
4 expedited basis.

5 Your Honor, I would submit that is dispositive and
6 ends this inquiry and, at the very least, if not putting it on
7 for May 23rd, we should take the time Your Honor has set aside
8 already on June 12th. And that is even more pronounced now for
9 the reasons others have articulated with direct appeal for the
10 preliminary injunction being denied and those issues being
11 merged into the motion to dismiss hearing.

12 I won't get back into the merits that were set out in
13 four different letters on April 25th, April 28th, May 1st, and
14 May 2nd that were submitted with the Court, or the argument
15 that happened on May 3rd addressing the merits of why we
16 believed that we shouldn't even stray at all from the statutory
17 time period of 30 days.

18 I will add, however, Your Honor, that the limited
19 discovery that is being asked for in connection with the motion
20 to dismiss only confirms that June 12th is plenty of time.

21 We asked for targeted discovery, the TCC asked for
22 targeted discovery of LTL, seven document requests, in addition
23 to standard financial due diligence that is turned over in a
24 matter of days, typically. Those seven requests, three of them
25 asked for specific documents: One asked for documents they say

1 they don't have; one asked for documents over which they appear
2 to continue to assert a common interest with respect to the
3 voidability or termination of the 2021 funding agreement; one
4 which documents a new witness that they propose, the Vice
5 President for Tax of J&J intends to talk about.

6 The financial due diligence, Your Honor, just to -- I
7 hear reactions on the other side -- the deadline for producing
8 documents which would include all those, there is no
9 disagreement on that deadline between the two parties. The
10 deadline to complete document productions was May 17th; that
11 was proposed by LTL and that was agreed to by the TCC. None of
12 this discovery is burdensome.

13 With respect, Your Honor, to one additional -- I
14 should point out that there was one additional document request
15 that was served on the counsel that signed the plan support
16 agreements and those are very targeted to go to whether these
17 firms actually are committed to litigate these cases in the
18 event the bankruptcy didn't happen, the subtype of cancer that
19 their clients have, and the legitimacy of those claims.

20 We were told by at least one counsel already -- we
21 just served these yesterday -- by at least one counsel who is
22 one of the firms that represents among the higher number of
23 claimants that he will not produce any of this on grounds of
24 privilege. That was told to us by email this morning.

25 For their part, Your Honor, LTL has again, maybe to

1 distract from the actual relevant facts here, asked for a
2 deluge of information. They've asked for 17, I believe,
3 requests for production, 24 interrogatories of us. They've
4 repeated many of those to other counsel. But at the end of the
5 day, Your Honor, again, we've all agreed on a common date for
6 producing all of this.

7 With respect to witnesses, Your Honor, there are
8 seven fact witnesses that LTL proposes. We've added two, their
9 CFO and the president that they left off the list. Six or
10 seven of those have already been deposed. There's one new
11 witness, there's one unnamed, which we don't know that they
12 have -- they haven't given us a name, they just told us
13 somebody, an additional person from our committee -- but it
14 seems like all of these have already been deposed in the
15 preliminary injunction proceeding. One, their president was
16 deposed in connection with the last motion to dismiss, there
17 may be some incremental amount of information we need from him.

18 But at the end of the day, Your Honor, four days for
19 the hearing is plenty, I don't think there's a dispute over
20 that, and over a month between now and then, again, is plenty
21 based on the facts before us.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 Mr. Gordon?

25 MR. GORDON: Greg Gordon on behalf of the debtor.

1 The first thing I was going to say is that we've made
2 progress, but I'm not sure after having heard that.

3 I did want to approach. I want to provide a chart
4 that actually Mr. Winograd provided to us with the schedule --

5 MR. WINOGRAD: Sure.

6 MR. GORDON: -- because I think it would be helpful
7 to walk through this. May I approach, Your Honor?

8 THE COURT: Yes, please. Thank you.

9 MR. GORDON: So before I respond to some of the
10 substantive points, I wanted Your Honor to see this schedule
11 because what this reflects is we had the meet-and-confer, the
12 debtor laid out a schedule that it was proposing that would
13 have assumed a hearing on June 20th. And we focused on that
14 because I think Your Honor at the last hearing, although you
15 said June 12th, you also said you had some availability on the
16 20th, and we had understood your instruction to be you need to
17 go meet and confer and come back, and we'll talk about it
18 again. But you can see how expedited this schedule this is.

19 And one of the things I'll note right off the bat is
20 we agreed on the date for exchanging initial discovery
21 requests, which was yesterday, and I did see -- I forget now
22 whether it was by email or pleading -- today that the Committee
23 of States wants to serve discovery tomorrow. So we have
24 another party that wants to serve discovery, which would
25 actually be on May the 10th.

1 We've agreed to identify our expert witnesses
2 tomorrow. The TCC is proposing they don't have to identify
3 theirs for another three days. And then we had actually put in
4 that -- if you're tracking this with me, Your Honor -- that we
5 thought that maybe a deadline should be imposed for the filing
6 of motions to dismiss because they keep -- they were coming in
7 in various batches and I think the most recent was maybe May
8 the 2nd, a couple came in then.

9 Now, it looks like the committee's position is that's
10 not necessary, and maybe it's not, but we have a concern,
11 obviously, that we're going to move down this schedule and all
12 of a sudden two or three more motions to dismiss would come in.
13 So I guess we're suggesting there should be a deadline. It
14 would be nice for all parties to know that we're done with the
15 motions coming in.

16 And then you can see there's a deadline for responses
17 and objections, which the committee is proposing to accelerate
18 that five days earlier than what we had proposed. I think we
19 can probably live with that.

20 And then we have a deadline to complete document
21 production and interrogatories. And I would just note that,
22 although both sides are saying right now that's an acceptable
23 date, I mean, that's only eight days from today. And there has
24 been substantial discovery that's been exchanged and now we
25 know that the States are going to have some additional

1 discovery coming in tomorrow.

2 So I don't want Your Honor to have the impression
3 that we're proposing some very lax schedule that's well beyond
4 what would be required. And, you know, I appreciate the fact
5 that Mr. Winograd is talking about the targeted discovery that
6 he has, but I've noticed in the discovery he served when he
7 targets certain documents, but then he says, but you've got to
8 prepare -- you've got to identify all your privileged documents
9 and provide a privilege log; we want all transmittal letters,
10 cover letters, transmittal emails; we want all exhibits, we
11 want all enclosures, all attachments; we want all drafts, all
12 revisions, all modifications, all versions, all supplements.
13 And, of course, they want ESI.

14 And so, to me, it would be an extraordinary
15 achievement if within eight days or so -- and longer in a
16 couple cases, shorter in others, if we get the States'
17 discovery, that we could actually produce within that time
18 frame.

19 And then you'll see deadline for expert reports,
20 we're very close on that. They actually proposed a couple
21 additional days to allow the fact discovery deadline to be
22 completed. You can see only five days for rebuttal expert
23 reports.

24 And then the motion to dismiss opposition, the May
25 16th date, as we understand their position, they're just fixing

1 on what Your Honor said at the last hearing, and we took that
2 to just be a reference to the fact that when this matter was
3 noticed by the other side, they noticed it for the 22nd.
4 Normally, the deadline is, what, seven days before --

5 THE COURT: Correct.

6 MR. GORDON: -- six or seven days before.

7 What we have proposed is May 29th, which would be,
8 what, over two weeks before the hearing, if it starts on June
9 12th, and of course three weeks or more if the hearing is later
10 than that, and we need more time. May 16th is going to be very
11 difficult for us because we've got -- at the moment, we've got
12 seven motions to deal with. Now, admittedly, there's overlap,
13 but it's still seven different motions and that's a lot of work
14 for us. And of course we've been subsumed with the mandamus
15 and certification and everything else.

16 So we are proposing May 29th, which, again, should
17 give them plenty of time to have that and plenty of time to
18 reply.

19 So you can see the proposed fact discovery deadline.
20 We proposed May 31, they're at May 24. Again, an incredibly
21 expedited schedule. Expert discovery deadline would be June
22 the 6th. And then they've proposed May 22nd for replies and,
23 of course, we're suggesting -- for a motion to dismiss reply,
24 we would suggest that be pushed a few weeks. And then just
25 going on down.

1 And so I wanted to spend some time to go through
2 that, number one, so that you can see we're trying to come up
3 with dates that we think are reasonable, but very expedited.
4 And, you know, standing here today, I have a hard time
5 personally seeing how we're going to meet these dates, but
6 we're committed to doing our best to do that, and that in part
7 is going to depend on our ability to make progress in meet-and-
8 confers to narrow the scope of some of the discovery to deal
9 with the fact that you've got discovery now served on a lot of
10 law firms and the like, you've got the states getting involved.
11 There's a lot of different parties and firms involved, all who
12 have to sort of support this schedule and agree to abide by it
13 and that's not going to be easy.

14 And then the hearing date, as you heard from Mr.
15 Winograd a few minutes ago, they want to stick with the June
16 12th date. And I just want to remind Your Honor that on June
17 the 12th Mr. Murdica is not available that day, Ms. Brown is
18 also not available that day. And June the 20th, although we
19 propose this hear for purposes of putting together the
20 construct, the problem we have with that date as well is that
21 Mr. Brown won't be available then. So I want to give Your
22 Honor an update on Valadez and the scheduling.

23 So what the judge has told the parties is that he
24 wants the trial to start May 15th and he's told the parties he
25 wants it to be ready to go to the jury on June 22nd. And if

1 that schedule holds -- and he says he's committed to that --
2 then Ms. Brown would be available the following week, that week
3 of June the 26th.

4 Now, the other side is strongly opposed to this for
5 reasons we don't fully understand. We can't see why a week or
6 two on issues of this magnitude would make that much
7 difference.

8 And it's easy for them to say that you've got
9 multiple law firms who can work on these matters, but Your
10 Honor knows from the first dismissal and PI hearings that Ms.
11 Brown played a very important role in connection with that.
12 And, to me, it just wouldn't be fair to us that based on a
13 request that one of the counsel on their side made to proceed
14 with a trial that she's rendered unavailable, particularly when
15 we know that the judge in the State Court case has said he's
16 committed to having that trial done -- and think about that,
17 May 15th all the way through June 22nd -- he's committed to
18 having it done and presented to the jury then, which would make
19 her available the following week.

20 So that's a long way of saying that the 12th doesn't
21 work for us because of her unavailability and Mr. Murdica's
22 unavailability, who's one of our witnesses. The 20th doesn't
23 work for us that week because of Ms. Brown's unavailability,
24 but that following week would work and we would ask for Your
25 Honor to move the date until then and, if Your Honor would be

1 willing to do that, I think that would allow us -- or provide
2 us with some additional flexibility to put a little more time
3 between some of these other deadlines and make these more
4 manageable than they are here. This is an extremely tight time
5 frame as it's laid out.

6 THE COURT: All right. Thank you, Mr. Gordon.

7 MR. GORDON: Thank you.

8 THE COURT: Mr. Winograd?

9 MR. WINOGRAD: Your Honor, Michael Winograd from
10 Brown Rudnick, proposed counsel for the TCC.

11 Your Honor, if there are scheduling difficulties,
12 then we would take Your Honor up on the idea that if the
13 parties can't agree, what Your Honor said last time, we'll make
14 it May 23rd. We agreed -- when Your Honor proposed June 12th,
15 we agreed to it.

16 Yesterday -- I will say it again -- yesterday,
17 counsel for the TCC filed a brief --

18 MR. GORDON: The debtor.

19 MR. WINOGRAD: I'm sorry, counsel for the debtor
20 filed a paper with the Third Circuit talking about how this is
21 on an expedited schedule and the Court has said aside June 12
22 to 16 for the motion to dismiss hearing. That's what they told
23 the Third Circuit. And the Third Circuit, apparently, latched
24 onto it and said I'm going to deny this writ and allow the
25 Bankruptcy Court to continue on that expedited basis.

1 There is no overwhelming discovery hear. They even
2 agreed preliminarily to the June 17th discovery -- complete
3 deadline for completion of document productions and
4 interrogatories.

5 With respect to the witnesses, they're all their
6 witnesses. We're the ones deposing them, they have to sit
7 there and defend them, but most of them have already been
8 deposed, almost all of them. There simply isn't a lot of
9 substantive discovery to do.

10 And it is ironic that they have asked us for more
11 discovery than we've asked them. Again, other than financial
12 due diligence, which is pretty standard, which we have
13 discussed coming down the pike, which they had done the last
14 time and it usually takes a matter of three, four, five days to
15 do it all, we told them about that in advance. We're talking
16 about a handful of targeted discovery requests that actually
17 request unredacted copies of X; that's one request, for
18 example, lots of them like that. They ask, on the other hand,
19 for far more discovery, even though it is their burden, it is
20 their good faith at issue, it is their financial distress at
21 issue and they seem to think we have more information on that
22 than they do.

23 In any event, Your Honor, let me turn -- again, we've
24 agreed on a document production deadline, one month to do this
25 is plenty. This is limited, narrow discovery for facts that

1 have come up since the January 30th ruling until now that
2 haven't already been covered in the preliminary injunction
3 proceedings.

4 I will say just briefly, Your Honor, with respect to
5 the motion to dismiss opposition brief, I don't see any basis
6 -- Your Honor had said that Your Honor's calendar is congested
7 and suggested June 12th, I don't see any basis based on that to
8 push off their deadline of May 16th to file an opposition.

9 We need to see what their case is. It's their case,
10 it's their good faith, it's their financial distress, we need
11 to see their arguments before we can determine exactly the
12 scope of discovery that may be needed beyond what we've already
13 asked for. That needs to happen before discovery is completed.

14 And by the way, Your Honor, there cannot be any doubt
15 that the debtor already knows what it's going to say in that
16 brief. This is not something that has come up quickly. They
17 have planned this, this entire bankruptcy was planned, and they
18 should know exactly what that opposition is going to say. I
19 would venture to guess that it's probably already drafted, Your
20 Honor.

21 Thank you, Your Honor.

22 THE COURT: All right, thank you.

23 All right. There are no easy choices -- Mr. Malone?

24 MR. MALONE: Your Honor, Robert Malone of Gibbons on
25 behalf of the States of New Mexico and Mississippi. I rise

1 only because I'm not going to interfere with the schedule.
2 We're Switzerland as far as that, in fact. Probably for once,
3 I'd probably agree with the debtor that the June date is
4 appropriate.

5 As the Court may understand, when you represent
6 states, it takes a while for people to give sign-off on certain
7 things, and I only received the sign-off of one of my two State
8 Attorney Generals while we're sitting here in court.

9 We will be filing tomorrow, because I'm here, a
10 motion to dismiss. That motion to dismiss adopts a lot of the
11 other arguments of the Talc and other people, but to the point
12 of what we're putting in there that may be unique is the State
13 -- the sovereign rights of the States, which I think is more of
14 a legal issue. I don't think I'll be seeking independent
15 discovery from the debtor. Of course, if they seek it from us,
16 there may be some back-and-forth, but as far as I can see,
17 we've got plenty of time to get that to them. It is not a very
18 long motion, it doesn't have multiple exhibits. Again, it
19 adopts everybody, but I wanted to be heard to be included
20 within it and we'll abide by whatever the schedule is that this
21 Court orders today. But we will be the number eight, I guess,
22 as far as motions to dismiss in this matter.

23 Thank you.

24 THE COURT: All right, thank you.

25 See, and I was going to say, I can't imagine who else

1 would be filing.

2 (Laughter)

3 THE COURT: But I can't imagine, if there are more
4 filings, that it's going to raise any issues that haven't been
5 addressed in the seven or eight prior ones.

6 Folks, I'm looking for blank dates on a calendar;
7 there aren't many. It's a struggle in June.

8 To say let's start -- do it on May 23rd is just a
9 nonstarter, it's just not practical. We'd get nowhere. We'd
10 get -- we'd get argument, but it's not meaningful. To suggest
11 that the Circuit would have granted the mandamus if they knew I
12 was going to do it a few days later is also nonsensical. I
13 don't think they reach decisions based on a week one way or the
14 other, I would hope not. Six months, three months, yes; a
15 week, it can't be.

16 So what I'm going to suggest is I'll break it up.
17 I'll give a little bit more time, not what the debtor wants,
18 not what the committee wants, but I'll break it up. I'm going
19 to dedicate four days with a fifth in reserve that I could
20 squeeze if you all get very verbose. What I will do is push it
21 later. I will give the June 15th and 16th, and June 21st and
22 22nd. Those are four days. That Friday, the 23rd, I can't
23 give, it's an important Judges' date, but I have that Monday in
24 my back pocket, the following, the 23rd.

25 So it's June 15th, June 16th, June 21st, and June

1 22nd. So we're talking about -- what are we talking about --
2 ten days later, two weeks later. If Ms. Brown finishes the
3 trial earlier, she can accompany, if she can be squeezed out a
4 day or two, if she can be there. It addresses Mr. Murdica's
5 issue -- well, I don't know, I don't know how long he's away.
6 But we'll start with the 15th and 16th, and we'll continue the
7 following week.

8 MR. MOLTON: Your Honor, David Molton, excuse me for
9 interfering --

10 THE COURT: Yeah.

11 MR. MOLTON: -- proposed counsel for the TCC. Can we
12 confer? I mean, there are folks not just on my left side, but
13 on my right side who have scheduling issues as well --

14 THE COURT: I was going to offer that --

15 MR. MOLTON: -- and -- yeah, and more than just one.

16 THE COURT: Yeah.

17 MR. MOLTON: So --

18 THE COURT: What I wanted to provide you with is --
19 so I have the 15th and the 16th, I have the 21st and the 22nd.

20 I have also -- let me give you these days. I have
21 the week of the 26th as well. I can probably carve out the
22 Monday. I have a hearing on the 27th, an omnibus date for
23 Whittaker, Clark, I can probably move it. I mean, I'll try to
24 accommodate the following days as well, that following week as
25 well.

1 MR. MOLTON: Okay, if you can give us just a few
2 minutes, Your Honor.

3 THE COURT: Well, what I was going to suggest is work
4 -- you know, we're going to be back here next Tuesday.

5 MR. MOLTON: Yeah.

6 THE COURT: Why don't you all confer on both sides --

7 MR. MOLTON: That's fine.

8 THE COURT: -- and then come up with a workable
9 schedule.

10 As far as the brief, my feeling was it should be May
11 26th, so that -- and if this is the schedule that works, that
12 puts it far in advance.

13 MR. MOLTON: Yes. Judge, just from my personal --
14 the 26th of June is really --

15 THE COURT: No, no, May 26th.

16 MR. MOLTON: No, no, no, I'm just talking about the
17 trial date --

18 THE COURT: Oh, yeah.

19 MR. MOLTON: -- that that may be -- that is a date I
20 can't be here, but we'll discuss with other folks.

21 THE COURT: July is very open, but I don't want to
22 touch that, July, but I could be far more flexible in July.
23 But, in June, I'm giving you four or five dates that can work.

24 MR. MOLTON: Yes, Your Honor.

25 THE COURT: Okay, all right. And then if we need to

1 have -- we don't have to wait for the 16th, if you want to have
2 a call, we can do that as well, just to refine it.

3 All right. Now, no PowerPoints, just a ruling on the
4 future claims rep motion. Not double-spaced, it shouldn't take
5 too long. All right.

6 With respect to the debtor's motion to appoint Randi
7 Ellis as for the Future Talc Claims Representative, the Court
8 renders the following ruling.

9 The Court has jurisdiction under 28 U.S.C. Section
10 1334, it's a core matter under 28 U.S.C. Section 157(b), and
11 jurisdiction is also found 11 U.S.C. 524(g).

12 I learned about 17 years ago back in baby judge
13 school that the desire to avoid appeals is not a proper
14 foundation for judicial decision-making. After listening to
15 oral argument last week, last Wednesday on this motion, and
16 reviewing all of the information in the written submissions and
17 exhibits, including all supplemental submissions and exhibits,
18 it became evident to the Court that the only reason not to
19 appoint Ms. Ellis as the FTCT in this case would be to avoid
20 potential appellate practice and a disruptive impact on the
21 reorganization and potential plan process, to the extent we get
22 that far.

23 Indeed, my law clerks and I agreed that the easiest
24 course and pathway of least resistance would be to simply abide
25 by the calls for the appointment of a different FTCT. However,

1 we also agreed that to do so would be a disservice to Ms.
2 Ellis, her constituency of potential future claimants, the
3 Court, the bankruptcy estate, and possibly our judicial system
4 as a whole where decisions must be made after a careful review
5 of the record and not simply premised on litigation strategy-
6 driven accusations which provide unfounded.

7 Put simply, the Court finds nothing in the record
8 presented which establishes that Ms. Ellis is unqualified, nor
9 incapable of satisfying all of her fiduciary obligations to
10 protect and advance the interests of all Future Talc Claimants,
11 however ultimately defined. Quite the contrary, Ms. Ellis's
12 training, considerable experience, and nationwide reputation
13 for her work in the mass tort area has gone unchallenged both
14 in the first LTL case, as well as the present. Indeed, she
15 received nearly universal plaudits and praise for taking on the
16 role of the FTCR in the first case. She was the consensus
17 election after a judicially-crafted selection protocol, which
18 offered ample opportunity for discovery and consideration of
19 alternative candidates.

20 So what has changed since the first case? Well, it
21 has not been either her work product or her performance as the
22 FTCR. It appears uncontested that copies of her work and
23 findings, including those of her routine professionals, were
24 sought by the TCC professionals even after the Circuit directed
25 dismissal of the case. Moreover, her professionals were

1 implored to continue their work.

2 What this Court finds that really has changed is that
3 Ms. Ellis engaged in communications with counsel for J&J and,
4 presumably, that counsel also served as counsel for new JJCI
5 or, presently, Holdco, which entities were the very funding
6 sources under the 2021 funding agreement. These communications
7 came at a time when the first case was about to be dismissed
8 after the Circuit's ruling, but during a period of time in
9 which this Court implored all stakeholders to continue
10 settlement discussions. These communications, without
11 meaningfully more, can hardly be viewed as a disabling
12 conflict.

13 The Court notes that the communications evidence that
14 Ms. Ellis was made aware of the debtor's intent to re-file a
15 new Chapter 11 case, and was asked by counsel to support the
16 re-filing effort and to execute a declaration to that effect.
17 There is no dispute that she chose not to execute such a
18 declaration.

19 The Court turns to what has not been established and
20 has been raised only through unsupported innuendo.
21 Specifically, it has not been established that Ms. Ellis had
22 any involvement in the debtor's decision, planning, or
23 implementation of its decision to re-file the Chapter 11; or,
24 number two, that Ms. Ellis -- it has not been established that
25 Ms. Ellis engaged in any negotiations whatsoever with J&J,

1 Holdco, the debtor, or anyone with regard to any terms for any
2 plan support agreement or term sheets, including any dollar
3 figures attributable to the overall settlement, the percentage
4 shares to be divided among present or future claimants, or
5 detailed compensation matrices.

6 Rather, the evidence confirms that Ms. Ellis was not
7 in a position without further review and investigation or study
8 to agree to such terms. How could she inasmuch as her work as
9 the FTCT in the first case was coming to an end and no one had
10 given her assurances that she would be selected as the FTCT in
11 any future case, certainly not the Court.

12 The record is also lacking any evidence that she
13 sought or negotiated for any position as the claims
14 administrator post-confirmation in any second filing. Rather,
15 all evidence points to a rather nonsensical decision by others
16 to include her name as a placeholder without her knowledge or
17 consent.

18 In sum, the record is clear and this Court so finds
19 that, while at some point in time she was made aware of the
20 debtor's intent to re-file a Chapter 11 case, Ms. Ellis never
21 made a commitment to support a new filing or any specific terms
22 put forward by the debtor; instead, she refused to sign off on
23 any such agreement or declaration.

24 This Court disagrees with those parties who contend
25 that Ms. Ellis had a duty to disclose voluntarily the debtor's

1 intent to re-file. Her fiduciary obligations ran to her
2 constituency, Future Talc Claimants, in the first case, and she
3 was and remains obligated to here consider and investigate all
4 options of recovery.

5 The mandate for independence and loyalty under the
6 Imerys standards compels her objective analysis and decision-
7 making.

8 In In re Imerys, the Third Circuit clarified the
9 standard for appointment of an FCR, and I quote: "The FCR
10 standard requires more than disinterestedness. An FCR must be
11 able to act in accordance with a duty of independence from the
12 debtor and other parties in interest in the bankruptcy, a duty
13 of undivided loyalty to the future claimants, and an ability to
14 be an effective advocate for the best interests of the future
15 claimants." That's In re Imerys, 38 F.4th 361, 374.

16 The Third Circuit noted that the standard is akin to
17 those employed for guardian ad litem, yet in other contexts.
18 This Court has employed the same standard in considering the
19 present motion and, as instructed by the Circuit Court, has
20 bottomed its analysis on Ms. Ellis's ability to serve the
21 future claimants' interests effectively and impartially.

22 So I return to the question of what has changed.
23 Well, I believe Mr. Thompson was correct in his assessment, Ms.
24 Ellis has demonstrated a willingness to consider bankruptcy as
25 an effective pathway to protect the interests of future

1 claimants; that recovery under a settlement trust, pursuant to
2 a plan reorganization, may offer a more fair and equitable
3 remedy for future claimants in lieu of recourse through
4 exercising Seventh Amendment jury trial rights with the
5 attendant risks and delays. This is hardly surprising for a
6 Future Claims Representative.

7 The willingness to explore and consider options lay
8 at the heart of an FCR's fiduciary obligations and can never
9 serve as the basis for a disabling conflict or give rise to an
10 appearance of impropriety.

11 The independence demanded of Ms. Ellis under the
12 Imerys standard require that an FCR be free to take differing
13 views about the proper pathways for protecting, as a fiduciary,
14 the interests of her constituency.

15 No, what has changed in this case is merely buyer's
16 remorse for certain objectors who once supported Ms. Ellis
17 unequivocally, but now find that she's independent and willing
18 to consider all options, even those presented under a new
19 filing.

20 Here, the TCC objects to Ms. Ellis's appointment and
21 asserts that an appearance of impropriety exists, excluding her
22 from consideration. As discussed, the FCR's support of the
23 bankruptcy option does not create a conflict; it's an opinion
24 based on what she thinks is best for her constituency,
25 something which she was specifically ordered and appointed to

1 consider.

2 I referenced New Jersey State Court Zukerman v. -- Z-
3 u-k-e-r-m-a-n -- by Zukerman v. Piper Pools, Inc., 232 N.J.
4 Super. 74, Appellate Division, (1989), which said, merely
5 "because a settlement is rejected by a guardian ad litem is not
6 in and of itself a sufficient basis to warrant removal. Nor
7 would it establish the type of conflict contemplated by our
8 rules. More is required."

9 Well, there is case law that indicates that the
10 appearance of impropriety must have a reasonable basis and must
11 be more than simply a fanciful possibility.

12 The New Jersey Appellate Division succinctly
13 explained that the appearance of impropriety must be something
14 more than a mere fanciful possibility, it must have a
15 reasonable basis, and the conclusion must be based upon a
16 careful analysis of the record. That's McCarthy v. John T.
17 Henderson, Inc., 246 N.J. Super. 225, Appellate Division,
18 (1991).

19 The Court overrules the objections raised. In doing
20 so, the Court finds that Ms. Ellis's retention raises no
21 specter of impropriety and wholly satisfies the standards
22 enunciated by the Circuit in Imerys.

23 In choosing not to undertake any further
24 consideration of alternative candidates, the Court is mindful
25 of the cost and delays which would be required to do so.

1 Likewise, the Court is mindful that Ms. Ellis faced
2 considerable hurdles in securing competent and independent
3 professionals who did not have conflicts or a desire to avoid
4 the scrutiny which accompanies this case. It makes little
5 sense to place a new FTCR in such a position once again.

6 In addition to the time that would be necessary for
7 that professional to come up to speed, it makes little sense to
8 force a new professional to incur the delay attendant to
9 obtaining new professionals.

10 I make the appointment today with the proviso for all
11 concerned that I cannot at this juncture envision approving Ms.
12 Ellis for any role as a post-confirmation administrator for any
13 confirmed plan, again, assuming we get there.

14 I'll ask debtor's counsel to submit a form of order.

15 Thank you. Court -- Ms. Richenderfer, I was just
16 about to end it.

17 (Laughter)

18 THE COURT: You got me.

19 MS. RICHENDERFER: I apologize, Your Honor, and I
20 rise, believe me, to address something that I do not like to
21 have to bring before the Court.

22 Your Honor, may I approach?

23 THE COURT: Yes.

24 MS. RICHENDERFER: Your Honor, during both the first
25 case and the second case, you have commented on the world is

1 watching us --

2 THE COURT: Yes.

3 MS. RICHENDERFER: -- and you have also commented on
4 and chastised, and I'm not going to comment one way or the
5 other, on certain statements that were made by plaintiffs'
6 counsel. Unfortunately, Your Honor, the United States Trustee
7 has to come before you and complain about certain things that
8 J&J is saying on its website regarding the United States
9 Trustee's Office.

10 Your Honor, at the top of it, the website there is
11 listed. The cover page of this website states, "From time to
12 time, the topic of talc will be in the news. This is the
13 Johnson & Johnson home for company statements on major news
14 events related to talc."

15 The first statement made by Mr. Haas, who I think,
16 unfortunately, has left, Your Honor, and I highlighted and
17 underlined, he talked about a, quote, "common interest fee
18 agreement between the United States Trustee's Office and a
19 group of minority law firms that oppose the plan."

20 Your Honor, I'm just appalled to suggest that there
21 was a fee agreement. Mr. Haas is an attorney, he knows what
22 these words mean. He stands right there behind my left
23 shoulder and listens to everything that is said in this
24 courtroom. Sometime between 11:30 last night, when I copied
25 the first statement, and 7 o'clock this morning the second

1 statement was made, "common interest agreement." I don't know
2 who or why they changed, but that's still not correct, Your
3 Honor.

4 Down below, I quoted from the transcript. On April
5 18th, Mr. Gordon brought up that the committee asserted a
6 common interest privilege with the U.S. Trustee's Office. In
7 response, I stated definitively, there is no common interest
8 agreement. Your Honor, I think that Johnson & Johnson cannot
9 be allowed to be making these statements on the record about
10 the Office of the United States Trustee.

11 We debated on what to do with this, whether we should
12 have referred it elsewhere. We wanted instead to bring it to
13 Your Honor's attention. But the fact was that, on May 2nd,
14 they wrote that we had a common interest fee agreement, which
15 is just appalling that those phrases would be used. Mr. Haas
16 knows better than that and it's just beyond -- and I just want
17 to put an end to it right now.

18 The debtor is not happy that the U.S. Trustee is
19 taking certain positions in this case. We look at the case and
20 we determine what we need to say and the positions we need to
21 take and the questions we need to ask, but the fact is that
22 they're going to start making accusations about us in response
23 to this? This is, I think, untenable, Your Honor, and I needed
24 to bring that to your attention.

25 THE COURT: No, I'm glad you did. I think I would

1 note, with respect to common interest privilege, I think you
2 were involved in a case in Delaware as a practicing attorney,
3 Simplex or something along those lines, where the court ruled
4 that the common interest privilege, it can't come about by
5 agreement. It's a common law privilege, it either exists or it
6 doesn't, you cannot make such an agreement.

7 So, but I can -- or Suttletex (phonetic) -- it was a
8 case, I have to --

9 MS. RICHENDERFER: Your Honor, you have me, I have to
10 say, because I think you're talking about a period before I
11 came to the office perhaps?

12 THE COURT: Yes, yes.

13 MS. RICHENDERFER: Okay. Your Honor, I don't know
14 what that was all about, but there was no -- there is no common
15 interest privilege --

16 THE COURT: I think your point has been taken and
17 I'll --

18 MS. RICHENDERFER: -- especially not an agreement
19 because an agreement entails --

20 THE COURT: I would --

21 MS. RICHENDERFER: -- a meeting of the minds, a
22 handshake, a written document --

23 THE COURT: I don't accept --

24 MS. RICHENDERFER: -- so even if it arises.

25 THE COURT: I don't accept that there's been an

1 agreement. I think the fee agreement may be just poor language
2 or choice, I can't imagine that either, but we'll let Johnson &
3 Johnson and counsel -- do you want to be heard?

4 MR. STARNER: Your Honor, if I may?

5 THE COURT: Yes.

6 MR. STARNER: Your Honor, Greg Starnier of White &
7 Case on behalf of J&J. I'll be very brief.

8 This was brought to our attention yesterday, the
9 reference to common interest fee agreement. It is a typo and
10 J&J merely fixed it, and we informed Mr. Vera of that. So he's
11 in receipt of that, I think he acknowledged that we had fixed
12 it.

13 The second statement, as I'm just seeing now, it
14 actually is accurate. It does refer to the Trustee's motion
15 and refers to whose counsel testified they entered into a
16 common interest agreement.

17 I agree that that is a little bit disturbing, but
18 that is an accurate statement. This was what occurred during
19 the deposition of Mr. Molton, so I was there at the deposition.
20 So certainly that statement is accurate.

21 And we can certainly debate about whether or not a
22 common interest exists, and I acknowledge that the U.S.
23 Attorney's Office has acknowledged that there is no common
24 interest, but it is accurate to say that the TCC did take that
25 position.

1 So I just want to be very clear about that is a typo
2 that has been fixed and so I don't think there really is an
3 issue for the Court to, you know, take up.

4 THE COURT: All right.

5 MR. STARNER: Unless there's any other questions,
6 Your Honor --

7 THE COURT: I don't. Thank you.

8 Mr. Winograd?

9 And here I thought I was a gavel drop after a ruling
10 on the --

11 MR. WINOGRAD: Your Honor, I'm sorry. Michael
12 Winograd from Brown Rudnick on behalf of proposed counsel for
13 the TCC.

14 Your Honor, that statement is still not accurate. I
15 defended Mr. Molton in that deposition and, while we referred
16 to a different common interest agreement with a different
17 party, which does exist, we never once identified or claimed
18 there was ever a common interest agreement. What we said over
19 and over again in paragraphs of explanation was that they were
20 looking for communications between the TCC and the UST. It was
21 beyond the scope of the topics that we were informed of for
22 that deposition, it was completely irrelevant to the PI.
23 They've asked for it again, it's completely irrelevant to the
24 motion to dismiss.

25 We asserted a common interest by virtue of the fact

1 that we were co-litigants taking the same side with the U.S.
2 Trustee, we never asserted that there was any agreement
3 whatsoever.

4 And I will go one step further, Your Honor. There
5 was never, despite all the fanfare and this press release, not
6 once before Your Honor has there been an actual objection
7 filed, a motion, you know, to compel.

8 Second, Your Honor, we just again received document
9 requests for the exact same stuff, communications generally
10 with respect to the 2.0 filing, settlement with -- or talc
11 claimants between the committee and the U.S. Trustee. We are
12 happy to consider those, address those, and we will not raise a
13 common interest if that is the cause of the problem. There are
14 other objections, in any event, but I will say that if Your
15 Honor thinks it's relevant and we are instructed or we decide
16 to produce it, I think that the other side is going to be
17 sorely disappointed. I don't know exactly what they think is
18 there, but I think they'll be sorely disappointed.

19 Thank you, Your Honor.

20 THE COURT: All right. We're adjourned. Thank you
21 all.

22 * * * * *

23

24

25

C E R T I F I C A T I O N

We, DIPTI PATEL, KAREN WATSON and TRACEY WILLIAMS,
court approved transcribers, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter and to the best
of our ability.

/s/ Dipti Patel

DIPTI PATEL

/s/ Karen Watson

KAREN WATSON

/s/ Tracey Williams

TRACEY WILLIAMS

J&J COURT TRANSCRIBERS, INC.

DATE: May 10, 2023

Exhibit 2

In the Matter Of:

In Re: LTL Management LLC

MIKAL WATTS

April 17, 2023



UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

CASE NO. 23-12825 (MBK)

CHAPTER 11

IN RE:

LTL MANAGEMENT LLC BANKRUPTCY,

Debtor.

REMOTE VIDEOTAPED DEPOSITION OF

MIKAL WATTS

Monday, April 17, 2023

10:05 a.m. (EST)

Reported By:

Joan Ferrara, RMR, FCRR

Job No. 2023-892931

April 17, 2023

10:05 a.m. (EST)

Videotaped Deposition of MIKAL WATTS,
held remotely via Zoom, before Joan
Ferrara, a Registered Merit Reporter,
Federal Certified Realtime Reporter and
Notary Public.

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REMOTE APPEARANCES: (Continued)

BEASLEY ALLEN

FOR ALISHA LANDRUM AND OTHER TALC CLAIMANTS

BY: TED MEADOWS, ESQ.

MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC

FOR KATHERINE TOLLEFSON AND OTHER

MESOTHELIOMA PLAINTIFFS

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PROPOSED LOCAL BANKRUPTCY COUNSEL TO THE TCC

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FOR CHRISTINE FORBES, PERSONAL

REPRESENTATIVE OF THE ESTATE OF KIMBERLY

NARANJO

BY: CHRISTOPHER M. PLACITELLA, ESQ.

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REMOTE APPEARANCES: (Continued)

KARST & VON OISTE, LLC

FOR TONYA WHETSEL, TCC MEMBER

BY: DOUGLAS D. VON OISTE, ESQ.

ALSO PRESENT:

MIGUEL CONCEPCION, Videographer

RICHARD GOLOMB

STEPHANIE MARTIN

JOE SATTERLEE

MOSHE MAIMON

DAVID WEINSTEIN

ERIC PASTERNAK

HARRY M. ROTH

THE VIDEOGRAPHER: Good morning.

We are now on the record. Today's
date is April 17, 2023, and the time
is 10:05 a.m. Eastern Time.

This is the video deposition of
Mikal Watts in the matter of In re:
LTL Management, LLC bankruptcy, filed
in the United States Bankruptcy Court,
District of New Jersey, Number
23-12825 (MBK).

This deposition is taking place
via web videoconference with all
participants attending remotely.

My name is Miguel Concepcion. I
am the videographer representing
Lexitas.

Counsel will be noted on the
stenographic record.

Our court reporter today is Joan
Ferrara representing Lexitas.

The court reporter will now
swear in the witness.

MIKAL C. WATTS,

called as a witness, having been

1 M. Watts

2 duly sworn by a Notary Public, was

3 examined and testified as follows:

4 EXAMINATION BY

5 MR. WINOGRAD:

6 Q Good morning, Mr. Watts.

7 My name is Michael Winograd, and

8 we are from Brown Rudnick, and we are

9 proposed counsel to the Committee in this

10 bankruptcy.

11 Could you just start with your

12 name for the record, please?

13 A Sure. It's Mikal, M-I-K-A-L,

14 Watts, W-A-T-T-S.

15 Q And you are a practicing

16 attorney, correct?

17 A I am.

18 Q I'm sorry, I didn't hear you.

19 A I am.

20 Q Okay. Have you been deposed

21 before?

22 A Many times.

23 Q So you -- and I take it you've

24 taken many depositions as well?

25 A Many, many, many.

1 M. Watts

2 March 17. And I can explain why I remember
3 that, if you'd like.

4 Q Sure. Why?

5 A For two reasons: Number one, in
6 my meeting with Mr. Haas, I very much
7 encouraged him to deputize Mr. Murdica to
8 engage Mr. Itkin, with whom I have great
9 respect -- or for whom I have great
10 respect.

11 There was a seminar in Austin,
12 Texas that both he and Mr. Murdica were
13 going to be at that I couldn't make, and I
14 know they talked, and so I had a number of
15 conversations with Mr. Itkin.

16 Throughout spring break -- and
17 if I had a calendar open, I would guess
18 it's the 9th or 10th through the 17th -- I
19 can't remember exact dates -- I was skiing
20 with my kids. And there was a deadline
21 that I had given others to attempt to
22 negotiate a construct with J&J where I
23 would stay out of it until March the 17th.

24 I remember it because I think I
25 sent a computer tickler for -- if that

1 M. Watts

2 wasn't a Friday, my memory is not as good
3 as it used to be, but I remember calling
4 someone and saying, Hey, what's our status?
5 And there was none and then I engaged.

6 Q Again, when you say you stayed
7 out of it -- there was a deadline for
8 others to negotiate while you stayed out of
9 it, who were those others?

10 A So there are two primary others,
11 both individuals for whom I have great
12 respect. One is Andy Burchfield. And the
13 second is Jason Itkin.

14 And I did my dead-level best to
15 defer this process to both of them and to
16 encourage them to engage in it because I
17 felt like we were coming up against
18 somewhat of a deadline where if we passed
19 it, would result in 98 percent of these
20 women never seeing a dollar, and I was very
21 concerned about that.

22 But they were entitled to take a
23 shot it. I made myself available, offered
24 advice, and said, You guys do it, you've
25 got it, I'll leave it alone until next

1 M. Watts

2 Friday, and I did.

3 Q And when you say there was a
4 deadline, what was the deadline you were
5 referring to?

6 A So I was very concerned, and I
7 think that J&J had made clear, that once we
8 were sent back to the tort system, this was
9 virtually an impossible case to settle for
10 all the ladies who are alleged to have been
11 harmed.

12 As you know, this has been going
13 on for 10 years, and I think there's been
14 46 trials. That, by definition, if there
15 were 38,000 women who filed suits, means
16 it's 37,940 or 54 that haven't gotten a
17 trial over 10 years. So a lot of them are
18 dying. I've seen it on my docket.

19 And so I felt like that this was
20 a unique time opportunity, and according to
21 J&J, a one-time opportunity to get a global
22 deal done that would get all of the women
23 paid, as opposed to those fortunate enough
24 to have had trials over the last 10 years.

25 Q And when you say -- when you

1 M. Watts

2 say, "get the victims paid," you're
3 referring to ovarian cancer, which I
4 understand is the vast majority, and
5 mesothelioma, correct? Or are you just
6 speaking with respect to ovarian cancer?

7 A I think it's true as to both,
8 although I do commend the efforts of my
9 friends Mr. Satterlee and others with
10 respect to what they've been doing on meso.

11 Q So when you say -- when you're
12 talking about the deadline where you
13 thought once it went back to the tort
14 system it would be very hard to settle, are
15 you referring to the ovarian cancers and
16 the meso cancer claimants?

17 A Yes.

18 Q Okay.

19 MR. WINOGRAD: If you could open
20 up -- if you could open up Tab CC,
21 please, onto the screen?

22 BY MR. WINOGRAD:

23 Q And you're looking now,
24 Mr. Watts, at what's Exhibit 2.

25 (Exhibit 2, Plan Support

1 M. Watts

2 Agreement, Bates stamped

3 LTLMGMT-00001681 through 2611, was

4 remotely introduced and provided

5 electronically to the reporter, as of

6 this date.)

7 BY MR. WINOGRAD:

8 Q This is the PSA.

9 MR. WINOGRAD: And if you could
10 just scroll down to 11, I think, was
11 the page Mr. Watts mentioned
12 previously.

13 A Sorry, I got confused on the
14 last one.

15 Q No, no, it's easy to get
16 confused with all of these.

17 A Okay. Yes.

18 Q So this is the PSA that you
19 signed, right?

20 A Yes.

21 Q Okay.

22 MR. WINOGRAD: And if you can
23 just go to the exhibit, just keep
24 going down from that page -- keep
25 going -- right there.

M. Watts

BY MR. WINOGRAD:

Q You'll see it says: "Exhibit A,
Consenting Talc Claimant Counsel and
Claimants."

Do you see that?

A Yes.

Q Do you know who gave this
exhibit that name?

A I think my friend Bruce Bennett
at J&J in Los Angeles created the
"Consenting Fire Claimant Professionals," I
think it was called in that case. And so
we borrowed his language that was part of
the restructuring support agreement in
California fires and turned it to
"Consenting Talc Claimant Counsel."

If I recall correctly, the draft
that I copied said, "Consenting Talc
Claimant Professionals," and Mr. Murdica
changed it to "Consenting Talc Claimant
Counsel."

Q Okay. Who added "and
Claimants"?

A I think that was in there all

1 M. Watts

2 the time.

3 Q Okay. And at any point, did you
4 tell Mr. Murdica that your clients had
5 consented to the support plan, to the PSA?

6 A No. In fact, I think it would
7 be a violation of the anti-solicitation
8 rules under the Bankruptcy Code for me to
9 do so before this term sheet is transferred
10 into plan documents, litigation is had with
11 respect to whether that's going to be
12 submitted, a disclosure statement is
13 litigated and decided upon by Judge Kaplan
14 and then a voting period, and you can't
15 solicit votes until that voting period
16 starts.

17 So it would absolutely be a
18 violation of the Bankruptcy Code for me to
19 get pre-consent from my clients.

20 What I did do is I did what is
21 appropriate and what we did in California
22 fires, and that is, with the basic
23 construct that when you negotiate a deal
24 with somebody, you can't get their top
25 dollar unless they have your commitment

1 M. Watts

2 that you're going to try to get it taken,
3 right?

4 And so in the mass tort context,
5 that deals with participation thresholds.
6 In the bankruptcy context, it's done this
7 way where counsel is -- okay, I've
8 negotiated the best deal that I think there
9 is. I believe it's in the best interests
10 of my clients. I'm willing to recommend it
11 to my clients.

12 But it's not my job or my role
13 nor my right to bind my clients.

14 But Mr. Murdica is correct that
15 generally, when he negotiates settlements
16 with someone's lawyer, the lawyer then
17 advocates to the client, recommends it, and
18 in most mass tort cases, more than 97, 98,
19 99 percent in some instances of the
20 claimants take their lawyer's advice.

21 Q Okay.

22 A That's their right, not mine.

23 Q Thank you.

24 And so -- and just going back to
25 the title quickly, do you think the title

1 M. Watts

2 On the third page of the
3 article, it says: "Two plaintiffs' lawyers
4 supporting J&J's proposed settlement
5 acknowledged to Reuters that their clients
6 had not yet decided whether to approve the
7 agreement. Mikal Watts" -- spelled
8 properly -- "and Adam Pulaski, who said
9 they represent 15,000 and 6,000 claimants,
10 respectively, told Reuters they planned to
11 recommend their clients take the deal."

12 Do you see that?

13 A I do.

14 Q Now, you told us today that
15 you -- that the number for you should be
16 16,975, is that right?

17 A That's the number that came up
18 in the database search that I asked to be
19 done, so that would be your current number
20 today.

21 Q Aside from the correction of the
22 number, is there anything reported here by
23 Reuters attributed to you and/or
24 Mr. Pulaski that you believe is incorrect?

25 A The thing that confuses me about

1 M. Watts
2 this during the discussion with Mr. Murdica
3 is the author's name, who I forget, did
4 call me -- I don't believe I ever called
5 him back. But I think I talked to somebody
6 else at Reuters.

7 But let me just kind of put it
8 this way: There are very clear procedures
9 that must be followed. You need a
10 solicitation agent. You need a disclosure
11 statement. You need a solicitation period
12 order by the Court. And anybody that
13 starts soliciting votes before that
14 solicitation period starts is going to have
15 a motion to designate to not count those
16 votes.

17 So this line of questioning over
18 the last four days about, you know, you
19 didn't get authority from your clients, it
20 reminds me of the prosecutor's, you know,
21 question of Ms. Vito in My Cousin Vinnie
22 about the ignition timing, you know, of
23 something that didn't have the 327 cubic
24 engine. I mean, it's an impossible BS
25 question because you're not allowed to do

1 M. Watts

2 it.

3 And so the point is, is that the
4 way that it's being done right now, all
5 that's been agreed to and all that can be
6 allowed to be agreed to is a negotiation
7 between law firms and the people that they
8 are making claims against.

9 A term sheet that if that term
10 sheet is metamorphasized into plan
11 documents that are consistent with what
12 just negotiated, those lawyers agree to
13 advocate to their clients for this deal to
14 go through.

15 But to be clear, these clients
16 have the right to say no. They absolutely
17 do. About 98 percent of my clients in
18 California fires voted for the deal that I
19 negotiated. Do you think I got mad at the
20 other two? No. I represent them on their
21 choice.

22 Q Understood, and I appreciate
23 that, Mr. Watts.

24 I've got one final question.

25 Because you can't do it, you

1 M. Watts

2 have never committed to Mr. Murdica or
3 Mr. Haas that your clients would vote in
4 favor of the plan, true?

5 A All I've committed is that I'm
6 going to recommend it to them.
7 Mr. Murdica's statements that in every
8 other mass tort, you know, when somebody
9 gives you their word that they're going to
10 recommend it, that they come through,
11 that's true.

12 That's why in non-bankruptcy
13 settings, there's always participation
14 thresholds. Nobody wants to spend hundreds
15 of millions or billions of dollars to get
16 rid of half the problem.

17 And so here, it's different,
18 because we're in bankruptcy. And in
19 addition to the ethical rules that
20 Mr. Satterlee cited to me, we also have
21 bankruptcy rules, 11 U.S.C. Section
22 1125(b), and you better comply with it or
23 your votes aren't going to count.

24 Q Understood.

25 And because of that -- and you

1 M. Watts

2 can answer this "yes" or "no" -- you have
3 never committed to Mr. Murdica or Mr. Haas
4 that your clients would vote in favor of
5 the plan, true?

6 A That's true. I've committed
7 that I will recommend it. I think that
8 Mr. Murdica knows from his history with me,
9 and when I'm telling him I'm going to
10 recommend something, I usually deliver a
11 substantial majority of the clients.

12 I don't think I've got a
13 reputation of settling cheap, despite what
14 I've read the last couple of weeks, but at
15 the same time, when I recommend something
16 to my clients, because I fervently believe
17 it's in their best interests. If it's not
18 enough, I don't get behind it, and I never
19 ask them.

20 Q And as you've said -- I'm going
21 to move to strike everything that's said
22 after "That is true."

23 A Sustained.

24 MR. MAIMON: Thank you.

25 I pass the witness.